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MOTION PICTURES

A Study
In Social Legislation

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I

Motion Pictures as a Factor in American Environment

"Three billion is our estimate of the annual admissions to motion picture houses in the United States," says an official of the Famous Players-Lasky Corporation, one of the most important motion picture producing corporations in the world. An editor of the *Motion Picture News*, one of the leading American trade journals, believes that a more accurate estimate is four billion for the yearly attendance, with a corresponding daily attendance of from twelve to fifteen million, or approximately one-eighth of the entire population of the country per day. The United States Federal Trade Commission in a recent investigation of the industry decided that a daily attendance of twenty million was not an unreasonable estimate.[1] This would lead to the conclusion that the annual attendance approaches six billion, a total twice as great as that offered by Famous Players-Lasky.[2] There seems to be little or no conclusive evidence to support any of these estimates. For our purposes their importance lies not in their absolute accuracy, but in the fact that men in responsible positions, men who are best qualified to express opinions on the subject, are willing to estimate the industry as one of the leading enterprises in the country with a patronage many times the total population of the country.

An annual motion picture directory claims to have listed 20,006 motion picture theatres with addresses, in addition to 3,673 other theatres which present motion pictures not exclusively but as a side line supplementing a traveling company business.[3]

[1] United States Federal Trade Commission, Docket Number 835, August 30, 1921, Washington, D. C.

[2] A fairly reliable estimate places the daily attendance for 1916 between eight and ten million. The apparent increase is significant. See House of Representatives, *Hearings before the Committee on Education*, January 13-19, 1916, p. 203.

[3] Julius Cahn, Gus Hill, *Theatrical Guide and Motion Picture Directory*, 1921, and *Supplement* for 1922.

The territory covered by these 23,679 theatres, however, includes Canada, Porto Rico and Alaska, as well as the United States proper. *Wid's Daily*, a paper devoted entirely to motion picture news, estimates that there are about 14,000 recognized motion picture theatres in the United States, according to a statement made by the business manager. An editor of the *Motion Picture News* agrees with this estimate. The publicity director of the National Association of the Motion Picture Industry, Inc., is unable to make any more definite estimate than to say that the number varies from 14,000 to 17,000. The Federal Trade Commission has decided on the larger figure of 18,000 established motion picture theatres in the United States.[1] Building permits show more than 2,700 new theatres in the course of construction.[2] Again we find that no agreement exists concerning motion picture statistics. On the basis of such scattering information as is available it is probable that 18,000 is a closer guess than any of the other guesses which have been considered.[3] The seating capacity of these theatres varies from 200 or less to over 5,000, though there are only a few that come near the latter figure. It is easily seen that the motion picture as a part of our idea-forming environment is not a factor to be neglected.

In order to demonstrate that motion pictures are not a mere local phenomenon thriving only in the United States, attention may be called to the Australian statistics for the year 1920. "The total attendance at motion picture theatres during the last year was 67,466,657, or more than thirteen times the entire population of the country, while the revenues paid to the state in the form of taxes were almost half the entire sum collected from all amusement enterprises during the year." The total attendance at all amusements in Australia during the year was

[1] United States Federal Trade Commission, Docket Number 835, August 30, 1921, Washington, D. C.

[2] *Moving Picture World*, Vol. 51, No. 7, August 13, 1921, p. 689.

[3] See appendix A for detailed information concerning the number and distribution of motion picture theatres.

95,866,620, or about nineteen times the entire population, which in round numbers was 5,000,000.[1]

It is hardly necessary that any similar figures be quoted for European and other countries. It is not within the scope of this work to outline the international development of the industry except when such an exposition would aid in interpreting its development in this country. For that purpose it is sufficient to say that the development of motion pictures has been practically the same throughout the civilized world, though more gradual in some places than in others.[2]

Pick up almost any issue of any trade journal, and considerable space will be found to be devoted to the importance of foreign competition, to the lessons taught by the experience of foreign producers and exhibitors. The *Exhibitors' Herald*, *Motion Picture News*, *Exhibitors' Trade Review*, *Moving Picture World*, and *Wid's Daily*, the leading motion picture trade journals, are constantly fighting existing and proposed tariff measures on raw and exposed film for import and export. The competition of English, Italian, Belgian and German producers is being carefully watched by these journals. They do not consider motion pictures an American institution with a few parallel developments in foreign countries. They recognize that the American industry, while it may have progressed more rapidly in so far as its size is concerned, is not economically, mechanically or artistically independent, but is a part of a much broader movement.

It has been shown that motion pictures are an important part of the environment of the people of this country, and of those

[1] *Moving Picture World*, Vol. 51, No. 8, August 20, 1921, p. 790.

[2] The export and import figures in Appendix B, taken from the United States Department of Commerce, Bureau of Foreign and Domestic Commerce, *Commerce Reports*, January 2, 1922, pp. 34 and 35, emphasize the rapid growth of the international interdependence of motion picture interests.

of other civilized countries as well.[1] The statistics quoted in support of this contention are in many cases of questionable accuracy due to the fact that the development of the industry has been both rapid and recent, but they are the best available, and are vouched for by leading members of the trade, men who have been in positions to know conditions. In no case, excepting the import and export figures of the United States Department of Commerce, were any estimates included unless at least two other estimates were used as checks on their accuracy. The highest estimate was never quoted, no matter how plausible were the arguments on which it was based. In some cases we have figures which are possibly too high. In other cases, we may have been too conservative. It is worthy of remark, however, that the recent findings of the United States Federal Trade Commission are as optimistic as are the trade statements which have been quoted in this report. The material is significant because responsible men are willing to issue statistics showing the industry to be of such great size, and do so without fear of radical refutation. In the last analysis, for that matter, such statistics are not essential in so far as we are here concerned except as a general indication of the extent of the motion picture's influence for purposes of comparison with other idea-forming

[1] Owing to the recent and rapid development of the motion picture industry, and the consequent rarity of authoritative and comprehensive works on the problems connected with it, it has been deemed inadvisable to attempt to include a bibliography as a part of this study. Anyone who may wish to go more deeply into the subject is referred to the following lists of references which, while not so extensive as might possibly be desirable, afford a starting point for further readings:

Department of the Interior, Bureau of Education, "*List of References on the Use of Pictures in Education*," Library Leaflet No. 13, December, 1920, Washington, D. C.

Cannon, Lucius H., "*Motion Pictures, Laws, Ordinances and Regulations.*" Contains a list of references compiled by Melitta Diez Peschke, St. Louis Public Library, July, 1920. This list has been reproduced in *Wid's Year Book* for 1920, p. 288b.

institutions, for the great attendance at the numerous motion picture theatres in the United States is so well known that it needs no proof.

This important industry is of interest to society from three points of view. First, there are the problems of production, distribution and exhibition. These problems, however, concern us here only in so far as they have some direct bearing on the social as distinguished from the economic questions involved in a study of motion pictures. For example, the mechanics of photography and projection in themselves have no significance in a social study, but it is of considerable importance to know that practically all inventions of mechanisms which have permitted the establishment of the present industry have been made in the past twenty years.[1] The allegation of the Federal Trade Commission that a controlling interest in the industry is concentrated in one small central group of men is primarily an economic question, but it is an economic question which has social aspects which are evident when one stops to think that, due to this concentration, it may be within the power of a very few men to say what type of picture will be shown in a majority of theatres, and that the pictures produced by these same men will be shown, though not exclusively, in 98 per cent. of the theatres of this country, according to their own advertisements. The economic side, while not our primary interest, may have a distinct bearing on the social aspects of motion pictures.

Secondly, there is the problem of the health of the patrons. Controversies concerning the effect of motion pictures on the eyes have been common in recent years, and still seem to be unsettled though the weight of opinion inclines in favor of the harmlessness of motion pictures except in the comparatively few instances

[1] An appreciation of the rapid development of the motion picture may be gained by reading any of the innumerable magazine articles of ten or fifteen years ago describing its wonders, and comparing the facts there presented with the well-known achievements of today. An example of the old type of article is one by Charles B. Brewer, *The Widening Field of the Moving Picture*, *Century*, Vol. LXXXVI, No. 1, May, 1913.

where eyesight is badly defective to begin with. Minute regulations intended to protect the patrons from the dangers incident to fires in public places are provided by every state and city in the form of state laws, city ordinances or the edicts of local authorities. Building regulations usually specify a minimum of ventilation. The problem of sanitation is not a simple one. The fact that all theatres in infected areas were closed by government order during the recent influenza epidemic is an indication of the importance of this side of the question. However, such problems are technical medical and building problems, and mainly administrative. They do not fall within the scope of a social study of this nature.

Finally, we have the problems of social standards, of ideals, of morals. Social standards are influenced by motion pictures by the pictures themselves, that is, by the mental impressions received by the audiences from the screen portrayals of life, and by the peculiar physical conditions imposed by motion picture theatres on the patrons. There is an undoubted effect on standards of conduct resulting from the fact that the audience, often young boys and girls, are packed in narrow seats, close together, in a darkened room.[1] New words and phrases are coined only to meet new situations, and it is significant that the phrases, "movie masher" and "knee flirtation" are coming into use.

It is, therefore, with the effects of the pictures themselves on those who view them that we have to deal. The other phases are equally important, but of a different nature. The problems of social standards resulting from the physical features of motion picture houses, such as those arising from close seating in semi-darkened theatres, are almost wholly administrative, as

[1] "No one considering the effect of moving pictures can neglect the possibilities for bad behavior which occur through the darkness of the hall in which the pictures are shown. Under cover of dimness, evil communications readily pass and bad habits are taught. Moving picture theatres are favorite places for the teaching of homosexual practices." Healy, Wm., *The Individual Delinquent*, p. 308.

as are the problems of the elimination of fire, mob, building and health risks. In principle it is generally agreed that such risks should be minimized.

No such agreement exists in the consideration of the effect of the pictures on those who see them. The industry, the educators, the churchmen, the general public, all are divided and fighting among themselves over questions of principle involved. The method of fighting in vogue is that of flat contradiction of fact, although the facts do not seem to be difficult to obtain if wanted. Possibly they are not wanted. There is indeed no question but that many elemental facts, some of which it is inconceivable that anyone financially interested in the industry can have overlooked, have either been overlooked or deliberately disregarded. One of these, for example, is the undoubted constitutionality of censorship through the previewing of pictures. Though there have been two Supreme Court decisions on this question, many debaters against censorship use the plea of unconstitutionality as one of their main arguments. As a result of such attitudes it is necessary to study the facts themselves, and there are plenty available for study, rather than to argue on a basis of pure principle, if any sound conclusions are to be reached.

II

Social Standards of the Motion Picture Industry and the Public

It was one of the original purposes of this paper to develop a set of social standards whereby to judge the deviation of life as portrayed on the screen from normal conduct, and then to determine the probable social effects of the existing types of motion pictures. With this end in view, letters were written to various legal boards of censorship asking for the rules by which they judged films. Pennsylvania sent a detailed printed statement of acts and situations which were not permitted in pictures passed by its board of censorship. Ohio, on the other hand, maintained that a request for standards was impossible of fulfilment, on the grounds that no absolute standards could be established, and that even if any were established, adherence to them would be folly. Other replies received were similar to one or the other of these two. Upon further investigation, however, it is noticed that those boards of censorship which do issue formal standards specifically reserve the right to disregard them whenever they deem it necessary. The Pennsylvania board, for example, in the explanations of several of its prohibitions, carefully mentions that they are not absolute, but merely indicative of what the board believes desirable in most cases. No case can be judged without reference to factors outside of the picture which might alter its desirability. This is the reason why practically all municipal and state censorship legislation merely provides that "indecent", "obscene", "lascivious", "filthy," "unlawful", "sacrilegious", or "immoral" scenes shall be eliminated, instead of making more definite provision concerning specific undesired acts. It would be folly for them to make more definite provision, especially in view of the fact that the courts have held that the above terms are

sufficiently definite for ordinary purposes.[1] Fixed standards, rigidly applied, due to the fact that proper social standards are the result of and vary with the environment, are an impossibility.

The discussion concerning motion picture standards has been kept alive by four groups of people. These are, first, the members of the industry itself; second, the legal authorities who supervise the showing of motion pictures; third, miscellaneous organizations which have interested themselves in motion picture reform; and, fourth, the National Board of Review, which must be given a separate place in this classification on account of its unique character. It is true that there also has been considerable general discussion of the subject, but such discussion has accomplished little that is tangible except where it has developed into or allied itself with one of the groups mentioned above. The value of such general criticisms and suggestions, however, should not be underestimated on this account. It is undoubtedly largely responsible, for instance, for the formation and continuance of the National Board of Review. It has also probably caused a considerable change in the programs of the members of the industry. It is omitted only because its views are well represented by those of the groups mentioned. This being true, a discussion of the standards advocated by the groups mentioned will be sufficiently inclusive and representative to show whether or not any general and fundamental disagreement concerning socially undesirable film plays is discernible.

The members of the trade are probably the largest organized, actively interested group of all. They have spent great amounts of time, effort and money in endeavoring to ascertain what should and what should not be shown on the screen. Naturally their purpose has not been to make certain that the public morals do not suffer from what is seen in the movies. The producer, the distributor, the exhibitor, all are in the business to

[1] See, for example; *Jake Block, Nathan Wolf, et al., vs. The City of Chicago*, 239 Illinois Supreme Court Reports, 251; *Mutual Film Corporationvs. Industrial Commission of Ohio*, 236 U. S. Supreme Court Reports, 240.

make money, and the motion picture that they will show will be and is the one they believe will draw the largest crowd.[1]

In any competitive business enterprise, the ultimate goal must be the greatest possible number of sales. The motion picture industry is not an industry apart from the others. We cannot blindly censure the producer for making pictures the exhibitors will buy or rent at the highest prices nor can we censure the exhibitor for showing the picture he believes the public wants, so long as there is reasonable doubt as to their social effect, and we must assume that such doubt exists when federal, state and local officials do not use the power they have to prevent the exhibition of all films which are unquestionably contrary to public policy. Even though we could frown upon such mercenary conduct, we could not reasonably expect or hope that many men would voluntarily ruin highly profitable enterprises in

[1] The attitude of at least some leading motion picture producers is indicated by the following quotations:

"Several weeks ago I published a straight-from-the-shoulder talk entitled 'Which Do You Want?' asking the exhibitors of America whether they preferred clean, wholesome pictures or smutty ones. Instead of discovering that 95 per cent. favored clean pictures, I discovered that at least half, and maybe 60 per cent. want the pictures to be 'risqué', which is a French way of saying 'smutty'. The whole thing was an eye-opener, so totally different from what I expected that I am stumped! The Universal does not pose as a guardian of public morals or of public taste. For that reason it is quite possible that we may put out a picture that is off-color now and then as a feeler. We have no such picture yet, but it is easy to make them."—Carl Laemmâle, President of Universal Film Manufacturing Company, in *Moving Picture Weekly*, November, 1915, quoted by Chase, William Sheafe, *Catechism on Motion Pictures*, New York City, 1921.

Similar statements by equally prominent motion picture production officials may be found in an article by Mr. B. B. Hampton in the *Pictorial Review*, February, 1921, and the Congressional Hearings on House of Representatives Bill 456, January 13-19, 1916. Careful reading of articles in the leading trade papers seems to indicate that the type of attitude expressed by the above quotation is becoming less frequent, or at least it is an attitude no longer so freely aired.

order to be on the safe side of an argument which is far from settled.

The motion picture industry is avowedly attempting to present the types of pictures which the audiences wish to see. This is evidenced by the fact that the different types of houses show different types of pictures. For example, the motion picture houses are divided into two classes, the neighborhood houses and downtown houses. Neighborhood houses include all those which are in outlying parts of cities or in the smaller cities and villages. "Million dollar spectacles" are shown primarily in the downtown houses, i. e., those centrally located in large cities, because it has been found that if they are to be successful, such pictures must derive most of their income from the audiences which frequent the downtown houses. Many actors are known to be excellent drawing cards in the neighborhood theatre, while in the centrally located theatre their pictures are failures. In reporting on the drawing ability of a picture, the exhibitor is usually asked to mention the type of audience to which it was shown. The president of one of the largest chains of theatres in this country remarked recently to the author that "the downtown audiences will stand for a lot more sex stuff than the neighborhood audience, and they expect it, too." We may safely say that the industry is trying to give its customers what they want, even though they may want questionable products.[1]

[1] This not uncommon statement, that the motion picture interests are giving the public what it wants, is largely true, but is worthy of comment as an argument against censorship only to show that, as the Lancaster (Pa.) Law and Order Society pointed out in an open letter to Governor Sproul of Pennsylvania, dated November 29, 1920, this is a condemning admission, for it admits that the industry has no independent responsibility or ideals, and therefore needs to be watched, and that "it is not true that the moving picture men have no responsibility in this matter, for they themselves have helped to demoralize the public taste," Lancaster Law and Order Society, *Annual Report*, 1920, p. 5.

There is no lack of precedent for the governmental regulation of industries which claim to give the people what they desire. We have detailed requirements for the formation of corporations; the milk, meat and general food supply is "previewed"; many drugs are minutely regulated in their distribution-

No other generalization as to the standards of the industry can be made. There is no set of standards which could be applied to the entire field. It is, however, encouraging to note that while certain elements seem to have no ideals to which they adhere, the leaders in the industry are back of the movement to have only unimpeachable pictures shown. Their motive may be mainly economic. It may be that they see the handwriting on the wall. Whatever the cause for their desire for clean pictures, that desire is a fact. "Women constitute 65 per cent. of your audience. Why offend them?" says an advertisement in a motion picture annual. "There are some things that cannot be done safely even to fill empty seats in the summertime," remarks the editor of the *Exhibitors' Herald* in discussing the showing of a "sordid mess" by the name of "Some Wild Oats" in a number of mid-western theatres.[1] The bitter editorial of which this was a part may have been inspired by a growing consciousness of the fact that the industry's methods of filling empty seats are under fire, but it is, nevertheless, significant, that such an editorial should be given prominent place in a prominent journal. An executive of the Realart Company, after a ten weeks' tour of the United States in the interests of the motion picture industry, was convinced that there exists a universal sentiment among exhibitors against showing any but clean pictures. He is very careful to add that this virtuous tendency is not the result of a sudden desire on the part of the exhibitors to protect humanity from itself, but that it is the result of new social conditions which are eliminating the salacious, suggestive picture.[2]

It is also worthy of comment here that one large producing firm has recently engaged a well-known experienced censor as a permanent member of its staff to pass on its films before their release.[3] The immediate purpose of the company may be to save money by making their product "censor proof," as is being

[1] *Exhibitors' Herald*, Vol. XIII, No. 11, September 10, 1921, p. 36.
[2] *Motion Picture News*, Vol. XXIV, No. 19, October 29, 1921, p. 2274.
[3] *Moving Picture World*, Vol. XXIV, No. 16, October 8, 1921, p. 1852.

attempted by many other companies, but coming at the present time, the action must also be recognized as a yielding, be it ever so slight, to an increasing public demand for clean pictures.

That the members of the motion picture industry are not entirely insensible to the necessity of and demand for "clean pictures" is evidenced by the fact that the National Association of the Motion Picture Industry, representing the producers of a great majority of the motion pictures made in the United States, on March 5, 1921, unanimously adopted resolutions condemning the use of motion pictures as a means of "arousing bawdy emotions or pandering to a salacious curiosity", or otherwise endangering the public welfare.[1] Provision was made that the resolutions should not be so interpreted as to hamper the creators of art in motion pictures.

In view of the fire of criticism which is being directed at the supposed lack of standards on the part of the motion picture interests, it seems advisable to reproduce in detail the ideals which they profess to support. The resolutions condemn the production of pictures:

"(*a*) Which emphasize and exaggerate the sex appeal or depict scenes therein exploiting interest in sex in an improper or suggestive form or manner.

"(*b*) Based upon white slavery or commercialized vice, or scenes showing the procurement of women or any of the activities attendant upon this traffic.

"(*c*) Thematically making prominent an illicit love affair which tends to make virtue odious and vice attractive.

"(*d*) With scenes which exhibit nakedness or persons scantily dressed, particularly suggestive bedroom and bathroom scenes and scenes of inciting dancing.

"(*e*) With scenes which unnecessarily prolong expressions or demonstrations of passionate love.

"(*f*) Predominantly concerned with the underworld or vice and crime, and like scenes, unless the scenes are part of an essential conflict between good and evil.

[1] Chase, William Sheafe, *Catechism on Motion Pictures*, New York City, 1921, p. 21.

"(*g*) Of stories which make gambling and drunkenness attractive, or of scenes which show the use of narcotics and other unnatural practices dangerous to social morality.

"(*h*) Of stories and scenes which may instruct the morally feeble in methods of committing crimes, or by cumulative processes, emphasize crime and the commission of crime.

"(*i*) Of stories or scenes which ridicule or deprecate public officials, officers of the law, the United States Army, the United States Navy, or other governmental authority, or which tend to weaken the authority of the law.

"(*j*) Of stories or scenes or incidents which offend religious belief or any person, creed or sect, or ridicule ministers, priests, rabbis or recognized leaders of any religious sect, and also which are disrespectful to objects or symbols used in connection with any religion.

"(*k*) Of stories or with scenes which unduly emphasize bloodshed and violence without justification in the structure of the story.

"(*l*) Of stories or with scenes which are vulgar and portray improper gestures, posturing and attitudes.

"(*m*) With salacious titles and sub-titles in connection with their presentation or exhibition, and the use of salacious advertising matter, photographs and lithographs in connection therewith."[1]

These standards correspond to a great extent with the provisions concerning objectionable matter issued by the Pennsylvania and other boards of censorship, except that they are not so detailed and make more allowance for "artistic expression". The frequent eliminations by the various boards of review from films submitted to them by the same producers who signed these resolutions implies either a wide divergence of opinion as to what is injurious to the public welfare, or that the resolutions were not binding upon all of those who subscribed to them. Since, as we shall see later, the expressed standards of practically all

[1] Chase, William Sheafe, p. 21.

boards of review are based on the same ideals of conduct as those expressed in the above resolutions, the first possibility is minimized, though not eliminated. There is agreement upon what is socially desirable, but in actual practice, it is not always the socially desirable course of action which is pursued.

In actual practice, in fact, each company has its own standards, whether it is a producing or exhibiting organization. For example, many theatres, especially the larger ones, run over the films before the public showing and eliminate what is believed to be objectionable to the audience for which it is intended. This practice is so common even in states and communities which have little or no legal censorship that it excites no trade comment. It is taken for granted that each manager will use his own judgment. Such cuts are frequently made to shorten the program or to improve the "action" of the pictures from a technical point of view, but they are also made in order that the patrons may not be offended. Some few films are circulated throughout the country in the form in which they have been approved by one of the state boards of censorship, though no legal power to compel such procedure exists. There is no question that the entire industry knows what is accepted as socially desirable. Their actions and resolutions demonstrate that fact. How far their pictures are in accord with what they know to be the socially desirable standards is another matter.

Knowing that an appreciable percentage of the producers and exhibitors are willing, are anxious to give the people what they want; knowing that the energies of the industry are being bent to the task of finding out what its patrons want to see, it is of little importance further to study the standards of its leaders. We know that they are governed by self-interest, and that self-interest tells them to produce the thing that will sell best. Heretofore, the picture which has sold the best, or which has been believed to be the best seller, has been the sex picture or the melodramatic thriller portraying crime, violence and sudden death. In view of the rapid rise of the industry, the conclusions of its leaders that such pictures were wanted seems not entirely unjustified. But is the bold presentation of the

sex motive still desired by those who have the right to determine what shall be shown? That can be decided not by a study of what the producers think, but by a study of the carefully thought out sets of standards put forth by the representative groups of people who have interested themselves in the problem.

The best organized of these sets of crystallized public opinion are those of the various boards of censorship, all of which attempt to keep in touch with public opinion. In considering them, it must be borne in mind that they are not absolute, that no board rigidly adheres to them. The Pennsylvania Board of Censorship, which has been considered as representative of the best in American legal control of motion pictures, has formulated a very definite series of rules concerning the things that may not be shown, yet time and again mention is made, even in the rules themselves, that it is the spirit and not the letter thereof that will be carried out in the actual process of censoring.[1] One rule states that scenes in which the body is unduly exposed will be disapproved, yet in recent showings of the "Queen of Sheba", for example, the human form was repeatedly shown with an unusual amount of exposure, which was apparently not considered "undue." The reason for the apparent departure from the regulations was that the Board apparently recognized that the scenes were in keeping with the historical setting and that the underlying motives were remarkably free from the suggestive. Morals vary with the passing of time; they are not the same in all parts of the world, even in the various parts of the United States. The narrowest and most poorly equipped censorship official soon after entering office realizes that his judgments must

[1] The standards of the Pennsylvania Board of Censors were derived from those of the English censors, and in turn, have been adopted by practically all American previewing officials, with only minor changes. The present English standards which are given in Appendix C, are possibly too detailed to allow for a wise use of individual judgment which seems essential in censoring, but they are nevertheless in fundamental agreement with the accepted American standards.

vary as the time, setting, and themes of the pictures brought before him vary.

All scenes or motives which are prohibited by the Pennsylvania Board of Censors may be classed under the five headings of violations of social standards in regard to sex, person, property, religion and the state.[1] Eight out of nineteen rules deal primarily with violations of sexual standards, six deal with other offenses against the person, and two with offenses against property. None deal exclusively with violations of religious standards, or with offenses against the State. Profanity in subtitles and ridicule of religious sects are forbidden in minor provisions of rules which have to do mainly with other subjects. The State seems to be almost entirely unprotected, for the only provisions made in its behalf are the one which prohibits stories or scenes which hold up to ridicule or reproach races and other social groups, and might therefore incite riots, and that which forbids pictures dealing with counterfeiting. The emphasis is almost entirely on questions of sex and physical safety, with private property running a poor third in the race for protection.

The basis for these working standards of the Pennsylvania Board of Censors is Section 6 of the censorship act passed May 15, 1915. This section provides that the Board shall approve all films which are "moral and proper; and shall disapprove such as are sacrilegious, obscene, indecent, or immoral, or such as tend in the judgment of the Board to debase or corrupt morals."[2]

Attention is called to the fact that the legal statement in the above quotation of what should not be permitted to be shown on the screen is nothing new in the history of American legislation, or that of any other civilized nation. Certain acts which have been deemed detrimental to the welfare of the group have always been tabu. This country has always considered that

[1] For purposes of comparison with the standards of other organizations, the *Pennsylvania* rules are quoted in full in Appendix D.

[2] Pennsylvania State Board of Censors, *Rules and Standards*, Harrisburg, 1918, p. 4.

which is "'sacrilegious, obscene, indecent and immoral" or anything which might lead to such conduct, to be harmful to group welfare. In every state, city or county of the United States, irrespective of whether a censorship act is in force, the police officials have full power to regulate conduct not in accordance with the above provision. The only thing new about the act is that it provides a separate body of officials to deal with a specific problem of conduct, instead of leaving the entire field to the already existing authorities.

The important point for the present discussion, however, is not that a new official body has been created, but that there is general agreement, crystallized in the laws of our nation, on what should and what should not be permitted to be presented to the public. There is no place in the Union where any picture which is grossly immoral or sacrilegious cannot be immediately suppressed under existing legislation. But existing legislation does not define in most cases just what is immoral or sacrilegious, and that is one of the things that the law cannot do for the reason that there is no rigid and even temporarily unchanging classification of such acts possible. Admitting this point, realizing that morals are the expression of group opinion, we must consequently form judgment concerning the existing type of motion picture on the basis of what are the generally accepted social standards of today.

The opinion of the Pennsylvania Board of Censorship in its bare outlines is that anything which tends to break down the family in its present form is included in its legal instructions as to what not to permit. The portraying of suggestive nudeness, prostitution, assaults upon women with immoral intent, and other sex irregularities is believed to have such a tendency. Similarly, scenes which show gruesome situations, murders, stabbing, chloroforming, the inflicting of other personal injuries are disapproved, especially if prolonged beyond the limits necessary to the continuity of the play. The illegal destruction of property by burning or wrecking, and wrongful appropriation of property must also be shown only when necessary to the action of the picture. The Board seriously doubts whether it is ever

necessary to show the "modus operandi of criminals" in such detail as to be easily imitated. Sacrilege and the ridicule of funerals, morgues, houses of ill fame, hospitals, and the like, for purposes of slapstick comedy is also interpreted as tending to debase public morals. These minute yet flexible regulations are an attempt by an official body to interpret the will of the legislators who framed the bill and the people who have chosen them for office. Are they correct interpretations?

A series of studies which will be discussed in a later chapter was made, beginning in 1916 under the direction of the Civics Department of the General Federation of Women's Clubs. The women who interested themselves in these surveys must be considered as having social standards which are largely in accord with those of the general public, since the membership in the clubs is representative of the middle and upper strata of our population. At that time there were approximately two million members in the Federation, and the ideals of these two million women are largely representative of those of their families and closer friends. The classifications of pictures into good, bad and not worth while were made with practically the same bases for judgment as those used by the Pennsylvania Board of Censors, the main variation being as will be noticed later, the fact that the Women's Clubs did not express their ideas in as specific terminology as did the Board of Censors. The fundamental principles were remarkably similar.

The Women's Co-operative Alliance of Minneapolis, Minnesota, in an investigation of the Minneapolis motion picture houses in September, 1920, made use of the Women's Clubs' plan of procedure, but in adapting it to their own needs and in making the points for investigation more specific, they practically duplicated the standards in use by the Pennsylvania Board. Again, the only difference between the two was the fact that one was more detailed than the other.

We may take the results of almost any of the numerous investigations, including those by the National Board of Review which claims carefully to have sounded public opinion

in the formation of its standards, which have been made of motion pictures, and invariably find that the acts and themes considered undesirable are, with rare and minor exceptions, fundamentally the same.[1] The various boards of censorship eliminate and approve the same scenes and pictures, though occasionally some producer points with glee to a glaring inconsistency between the judgments of two boards, which, after all, is only to be expected when the various elements of the situation are taken into consideration. Women's Clubs, censorship officials, newspapers and other publications, ministerial associations, and the industry itself are united in principle. Any trade journal editor, any producer, any exhibitor will indignantly deny that he has any desire to advocate, produce or show anything which will tend to corrupt the morals of the people, though occasionally one will admit that it sometimes has to be done in order to compete with others whose ideals are not so high as his own and keep his own box office receipts on a paying basis, in spite of his higher personal standards of belief.

Since a common basis of principle has been established through a demonstration of the general acceptance of fundamentally similar ideals, it is now possible to discuss investigations of the content of motion pictures in an effort to determine its agreement with or variation from the established base.

[1] Much material issued by the National Board of Review, 70 Fifth Avenue, New York City, has been considered in the study of its standards. Since this has been in the form of pamphlets and scattered mimeographed sheets, it seems inadvisable to give specific references. It is sufficient to say that its standards are for practical purposes the same as those already quoted, namely, those of the National Association of the Motion Picture Industry, and those of the Pennsylvania State Board of Censors. The original material may be obtained from the Board upon request.

III

Conformity of Motion Pictures to the Accepted Social Standards

During the one year period from the first of November, 1917, until the first of December, 1918, in the city of Chicago, in which city practically the same pictures are exhibited as in any other city in the United States, the acting censor deleted 55,604 feet of film from that submitted to him for approval, or a total of 974 subjects. The brief official statement of the reasons for the deletions is given in the following table, as is the relative frequency of their occurrence:[1]

NUMBER OF SUBJECTS	CAUSES OF ELIMINATION	FT. DELETED	PER CENT.
467	Unlawful	31,040	47.9
220	Immoral	14,135	22.5
183	Indecent (Comedy)	6,539	18.77
42	Indecent (Drama)	1,978	4.2
36	Nude	1,093	3.0
17	Obscene	400	1.7
6	Race	254	0.6
3	Creed	165	0.3

While the assigned causes of the eliminations are extremely vague, it is possible to see in them the previously mentioned sexual, property, personal, religious and state offenses. Combining the immoral, indecent (both in comedies and in dramas), nude and obscene, we find that over 50.0 per cent. of the offenses were against sexual standards. Offenses against race and creed are in a very small minority, as is to be expected from our previous analysis of standards. The term "unlawful" is the most vague of all, but although it has been impossible to obtain any

[1] *Chicago Motion Picture Commission*, Report, September 1920, p. 183.

exact statement of what is meant, it is not difficult to reach the conclusion that it refers to scenes which would be likely to incite to unlawful acts through the portrayal of crimes and brutality. This heading includes a majority of the deleted subjects which were not included under the general heading of sexual offenses. At that, it is a very close second, lacking only 3 per cent. of being equal to the latter type of offenses.

A committee of four hundred women from the Chicago Political Equality League presented the results of what is probably the most extensive, representative survey of motion pictures ever completed in the United States to the New York Biennial Convention of the General Federation of Women's Clubs. One thousand, seven hundred and sixty-five plays were surveyed. About 21 per cent. of these were classed as bad, nearly 30 per cent., for example, showing criminal scenes. Only 20 per cent. were classed as being likely to have a positively beneficial effect on the audiences. The majority, or 80 per cent., were either of a harmful nature or "not worth while." [1]

Surveys similar to that made by the Chicago Political Equality League were made by Members of the Women's Federation in Michigan, Arkansas, South Dakota, West Virginia, New York

	NO.	PER CENT.
[1] Number of plays under observation	1765	100
Classed as good	348	20
Classed as bad	367	21
"Not worth while"	1040	59
Plays showing domestic infelicity	282	16
" " clandestine appointments	229	13
" " drinking or bar room scenes	485	27
" " scenes suggesting criminal acts	588	33
" " gambling scenes	210	12
" " lewd actions	193	11
" " objectionable close-up filming	158	9
" " risque or immoral scenes	229	13
Tending to create contempt for law, etc	123	7
" " contribute to delinquency	353	20

General Federation Magazine, January, 1919, p. 13.

and Rhode Island.[1] These were made on plans based on the methods used by the Illinois organization. Mrs. Bessie Leach Priddy, Chairman of the Federation's Department of Civics in 1919 is authority for the statement that these latter investigations "practically corroborated" the previous findings.[2] It is therefore unnecessary to quote from material which, gathered under very nearly the same conditions as the Illinois material, leads to identical conclusions.

A survey of sixty-two motion picture houses in Minneapolis in September, 1920, by the Women's Co-Operative Alliance while not so extensive as that by the Women's Federation, is probably more accurate and reliable in that it was completed by two workers who were acquainted with the methods of previous surveys, such as that by the Chicago Political Equality League, and who had used all possible precautions to standardize their judgments.[3] The features which they decided upon as objectionable were elaborations of the features which the Federation considered objectionable. A comparative study of their judgments later showed that they had been reasonably successful in reducing the personal element to a minimum. Since, however, their investigation was of an intensive rather than an extensive nature, its results cannot be considered representative or of any great value in a general discussion of motion pictures unless discussed from the point of view of their agreement with other material of a more general nature. In other words, so limited a sample may fairly be used only in conjunction with other samples.

Although made about five years after the Illinois survey, a noteworthy correlation is readily observable between the results obtained by the two investigations. The Illinois study found that 27 per cent. of the plays showed drinking or bar room

[1] General Federation of Women's Clubs, Report of Fourteenth Biennial Covention, p. 411, p. 450.

[2] *General Federation Magazine*, January, 1919, p. 13.

[3] Women's Co-Operative Alliance, Inc. *The Better Movie Movement*, Publication No. 38, Minneapolis, Minn., Feb. 1921.

scenes; the Minneapolis study found that in 19 per cent. of the plays which came under their observation there were *objectionable* drinking or bar room scenes. The former found that 9 per cent. contained objectionable close-up scenes; the latter found 12 per cent. contained objectionable close-up filming. The former found that 11 per cent. showed lewd actions; the latter found 12 per cent. to be the corresponding figure for this item.[1] Other items are possibly not entirely comparable due to the different working bases of the investigators. It is sufficiently evident, however, even to the casual observer that there is no significant inconsistency between the two reports.

The above quoted examples of investigations of motion pictures confirm not only each other in their conclusions, but also bear out numerous less pretentious investigations and a large amount of the individual criticism which has been directed at the industry for the admitted purpose of many of its members of giving the people the things they believe they want, irrespective of the social effects of such a course of action.

[1] Did the Plays Show	PER CENT. YES	PER CENT. NO
Habit-forming drug using made attractive	4	96
Objectionable bed-room scenes	4	96
Criminal methods in a way to give instructive ideas	6	94
Prolonged objectionable love scenes	6	94
Gambling made alluring or attractive	8	92
Race friction	9	91
Any objectionable close-up filming	12	88
Any risque or lewd actions	12	88
Religion or law ridiculed or held in contempt	12	88
Any irreverence depicted	14	86
Suggestive or objectionable exposure of person	16	84
Gruesome subjects or death scenes, objectionable	16	84
Objectionable drinking or bar room scenes	19	84
Infidelity or disregard of marriage vows	20	80
Underworld scenes or objectionable dancing	24	76
Any obscenity, immorality or vulgarity	36	65
Any sex problem handled in an objectionable manner	8	92

[1] Women's Co-Operative Alliance, Inc., *Better Movie Movement*, Publication No. 38, Minneapolis, Minn., February, 1921.

The Reverend Doctor Clifford G. Twombley, of Lancaster, Pa., is without doubt one of the leading churchmen who have done anything of value on the subject of motion pictures. It is his estimate that between 80 per cent. and 90 per cent. of all the children in this country under twelve years of age are reached by motion pictures. It was under his direction that the Ministerial Association of Lancaster, Pennsylvania, investigated conditions in that city from January 8 to February 9, 1917. A group of twenty-two ministers of various denominations viewed 134 different films which were shown in Lancaster during this period. Many of these pictures were seen by from two to six different investigators, and in cases where judgments varied, the picture was always given the benefit of the doubt. Of the 134 films examined, 65 were found to be "good," 31 to be "bad," and 38 to be "indifferent."[1] It will be noticed that the Ministerial Association acted favorably on a larger percentage than did the women's associations previously mentioned. In so far as violations of accepted social standards were found, there seems to be a correlation, though not to any remarkable extent, with the previous reports.

[1] Of the 134 films examined:
65 were found to be good.
31 were found to be bad.
38 were found to be indifferent.
30 pictures showed marital infidelity, bigamy, illicit love, immorality or lust, in unnecessary or objectionable ways.
26 pictures had one or more murders or suicides.
19 pictures showed intemperate drinking or drunkenness in them.
14 pictures showed robbery or theft, and more or less of their methods.
12 pictures showed gun play.
10 pictures showed gambling, both among the rich and the poor.
7 pictures showed the low resorts and habitues of the underworld.
7 pictures showed poisoning, chloroforming, the giving of knockout drops or the taking of drugs.
5 pictures showed kidnapping or blackmailing.

Ministerial Association of Lancaster, Pa., *Report of the Moving Picture Shows Investigation*, Lancaster, Pa., 1917.

As a result of Doctor Twombley's activities in fighting what he termed the "motion picture evil", he was invited in 1920 to Baltimore to study the films then being shown, to prove or disprove the statements of a motion picture exhibitor who said that if conditions could be shown to be as evil at a number of Baltimore theatres, as certain reformers claimed, he would forfeit a sum of money to any designated charity and devote his efforts to remedying the evil. The results of the consequent hurried investigation in Baltimore were published in the form of brief synopses of the stories of thirteen films viewed by Doctor Twombley. He admitted at the outset that 50 or 60 per cent. of the shows were good or harmless, and visited only those with suggestive titles. At that he did not have time to visit seven pictures with titles such as "Sinners", "Shame", "Camille of the Yukon", "Should a Husband Forgive", "The Woman Gives", "In Search of a Sinner", and "Midnight Gambols." That the titles are not entirely misleading is evidenced by the fact that of the above pictures, the second was condemned *in toto* by the Pennsylvania Board, while the others had 49, 15, 24, 15, 37 and 8 eliminations made respectively before they could be shown in that state.

Since the method of judging a picture by a synopsis of the story is somewhat different from the methods previously discussed, it may be of value to quote from Doctor Twombley in regard to one or two of the plays he viewed. The story of one reads as follows: "A man marries a prudish wife who repulses his amorous advances and caresses. He then meets a former girl acquaintance who tries to win him away by a purely physical appeal . . . . . After the girl has succeeded, the wife divorces the man, who marries the girl. Then the first wife, who overhears a conversation of two women about her, determines to win back the man again by the same purely physical, sensuous appeal, and as she succeeds, the second wife loses him. An effeminate violinist then makes love to the second wife in a sensual way and wins her. Twelve eliminations were made in this film by the Maryland board and twenty-two were made by the Penn-

sylvania board. It was distributed in its uncensored form throughout 44 States of the Union."[1]

Or again: "A girl is kidnapped from the house of a rich American in Egypt by an Egyptian 'nobleman' whom she has refused to marry, and carried to a 'house of infamy.' A young dragoman, the butler in the house, discovers the kidnapping and goes after the girl to the 'house of infamy,' where he dances in a sensuous scene with a prostitute in his arms, whom he finally locks in a chest. So he is able to rescue the girl just as she, half clad, is being forcibly caressed in a most sensual manner on a bed in another room in the house of the Egyptian. Later on he kills the Egyptian in revenge and the rich American marries the girl.

"(NOTE—The Maryland Board of Censors saved this picture from being even far worse by four most necessary eliminations. But the film goes practically uncensored in its worst form throughout the country, except in Maryland, Pennsylvania, Ohio and Kansas.)" Florida, New York and Virginia have since been added to the list of States which have censorship.

These synopses were picked at random from the thirteen reported in the Baltimore *Sun*. They are neither better nor worse than the others. While they must not be considered as typical of the majority of films released for public showing, it must be remembered that they are representative of a relatively large number of plays shown in the districts which have censor-

[1] Apparently the motion picture interests do not consider such pictures undesirable for to the best of Doctor Twombley's knowledge the forfeit was never paid. The wording of the challenge which appeared in an advertisemens in the *Baltimore News* was in part as follows:

"If you can point to a single motion-picture house in Baltimore which shows the class of plays that you describe, I shall consider it my profound duty to co-operate with you in a vigorous effort to prevent further exhibition of such films. . . . . If it be proved that any picture we show or have shown" (in certain specified theatres) "might have a tendency to corrupt the Public Morals, I will give $1,000 to any charitable institution you may designate." Quoted by Howard A. Kelly, in "The Movie Evil," in the Supplement to *The Christian Citizen*, Towson, Md., Vol. IV, No. 11, November, 1920.

ship, and representative of a larger number shown where no legalized censorship exists.

An analogy which is frequently made is one comparing a movie with a book or work of art, and arguing therefrom that that which is permissible in print and art is also permissible on the screen. This contention has been well answered by Dr. Ellis P. Oberholtzer in the following quotation. "I have often been told, when I have protested against a particular scene in a film, that this is but a transcript of what is described in a newspaper or a magazine. Conditions are very different; analogy is false. A printed line may tell of the birth of a child; a photographic depiction of the process of childbirth is another matter. An assault upon a woman may be alluded to in print; it may, indeed, be the climax of a story. But to photograph the last details of such an attack and reproduce each movement in the graphic method of the movie is to offend good taste, and often good morals."[1] In accordance with this line of thought it is not valid to contend that since stories much more frank in their basis of sex motive are generally conceded as good literature and a desirable form of human achievement, therefore motion pictures of a similar nature are to be fostered rather than repressed.

The National Board of Review has always maintained that its policy was to base its standards for reviewing on public opinion, and that it constantly kept in touch with public opinion through correspondence and other means of investigation. One of the means of investigation recently employed was a questionnaire which was sent to eight hundred leading theatre owners in different parts of the country. A mimeographed report issued by the National Board in March, 1921, stated that 64 replies from owners or managers of 104 theatres had been received and analyzed.[2] An attempt several months later to discover whether any more replies had been received resulted in the information that only two or three additional replies had come

[1] Oberholtzer, Dr. E. P., *What are the Movies Making of Our Children? World's Work*, Vol. XLI, No. 3, January, 1921.

[2] Mimeographed material in the hands of the author.

in since the issuance of the original report. In explanation of this small percentage of replies it was stated in a letter from the National Board that "it is our experience with exhibitors that only a rather small proportion can be counted upon to reply to questionnaires." If this were the only instance of reticence on the part of the industry in furnishing information it would not be remarkable, but there is no question that for some reason or other a policy of silence has been generally adopted.

For example, a test questionnaire was sent out by the author during the fall of 1921 to about 150 exhibitors in a mid-western city. Every known house was sent a copy, and there seems to be no doubt but that they reached their destination for only one was returned by the Post Office on account of wrong address. Five replies were received, and two of these did not contain the requested information. The questionnaire, however, had been carefully prepared so that no information was requested which was not obtainable in similar form through any of the trade journals, or which could in any way be considered a trade secret. A short time later a state division of the Motion Picture Theatre Owners of America wrote and requested that the author, to quote verbatim, "kindly give more information as to just who, what and why" the information was desired. It developed later that managers of the important theatres have orders not to fill out any questionnaires, but to send them to headquarters, as a matter of policy. Had fair answers been received to the first circulars, others with requests for more important information would have been sent out. As it was, such methods of investigation were shown to be fruitless, for even though subsequent replies might have been received in significant numbers it would have been dangerous to place much trust in them due to the suspicious turn of mind of the owners and managers.

To return to the questionnaire sent out by the National Board, if the limited number of replies is kept in mind in order to prevent the over-estimation of its value, the results may be used to corroborate the findings of other investigations. It must also be kept in mind that since it was issued by the National Board

of Review on information volunteered by the motion picture industry itself, the chances are in favor of any existing bias being to the credit of the industry.

Only fifteen of the sixty-three owners and managers replied that they had received any complaints from their patrons concerning the moral tone of the pictures they exhibited. Fifty-five objections were raised by thirty-seven individuals to whom questionnaires were sent, exclusive of those objections which related to sex-suggestive titles, to serials and to bathing-girl comedies. Twenty-three of the fifty-five objections were against the so-called sex pictures. The others were against "pictures with excessive brutality and killing," the showing of the underworld and crime, "nudity, vulgarity or salaciousness," the vampire and "over-done love scenes," and a total of seven objections against propaganda, costume, highbrow society, sacrilegiousness, dope, illegitimacy and "cheap" pictures. In answer to a later question specific pictures against which objections existed in the patronage of the theatres in question were mentioned. As was to be expected, no one picture was given any preponderance of votes, since there were only sixty-five mentioned at all. "Idols of Clay" was mentioned nine times, "Midnight Madness" six times, "Sex", "Prisoners of Love" and "Outside the Law" were mentioned four times. Two were mentioned three times, seven two times and forty-eight one time. It might be imagined that since such a wide range of choice existed that the objections were vague or ill-founded. This does not necessarily follow, for the total number of pictures mentioned was only a small part of the total shown during the six months covered by the investigation, and other investigations have tended to show that pictures containing objectionable features are not few.

The question of objectionable titles to pictures which are possibly otherwise unobjectionable was also raised, though the practice of attaching "box office titles" to the picturizations of innocent stories is too well known to require much comment. Changing the title of Sir J. M. Barrie's "The Admirable Crich-

ton" to "Male and Female" is one of many examples of this practice. There has been extreme frankness in the reasons assigned by the industry for the changes as is evidenced by several editorial discussions in trade journals concerning the relative drawing power of the titles of well-known books in comparison with the more startling titles tacked onto their picturization by the producers. Forty-three exhibitors told the National Board that they believed objectionable titles were being given pictures, while thirteen replied that this was not true. Forty-nine different pictures were named as examples by thirty exhibitors. "Passion" received thirteen votes; "Forbidden Fruit", eleven; "Passion Fruit", nine; "Sex", eight; "The Forbidden Thing", seven; "The Devil's Pass Key", "The Killer" and "The Passionate Pilgrim" three each. Ten were mentioned two times and thirty-one were mentioned only once.

In answer to the question, "Is the sex element too large?" thirty-two answered "yes" and twenty-three answered "no". The answers, "Not too much for our patrons but perhaps too much for the so-called reformers" and "No, neither motion pictures, literature nor life can be separated from the ideas of 'sex'" show why much of the undesirable element remains in the films of today, and will remain until removed by some power superior to the individuals' desires for gain. Thirty pictures were characterized as "sex pictures", including "Sex", mentioned thirteen times, "Midsummer Madness", mentioned nine times, "Passion", mentioned four times, and "Idols of Clay" and "Prisoners of Love", mentioned three and two times respectively. Six were mentioned two times and twenty, one time. Twenty-two of the exhibitors claimed that their audiences were larger when "sex pictures" were being shown, ten claimed that they were below normal at such times, and nineteen thought it made little or no difference. Thirty-five thought the National Board of Review should be more stringent in regard to their rulings on "sex pictures" and nineteen thought they were sufficiently severe in their rulings. In the entire summarizing report of the National Board of Review there is no evidence to

show that motion pictures are considered by the industry itself to be in accord with the accepted social standards.

It is perhaps worthy of noting that the investigations which have been considered are not representative of those against which much well directed criticism has been aimed on account of the apparently haphazard method of procedure and the use of questionable standards of conduct as the bases on which the judgments were built. An example of this type, which may be entirely accurate but is nevertheless inconclusive and likely to raise suspicions of bias, is one which was brought to the attention of the Committee on Education of the House of Representatives at its hearings on House Bill 456 for the creation of a federal motion picture commission, in 1916, by Doctor W. F. Crafts, superintendent of the International Reform Bureau. According to Doctor Crafts a state superintendent of schools of West Virginia studied the "real character of current motion pictures," and found that 25 per cent. of the pictures were "good" and "not bad", and that 75 per cent. were "bad" and "very bad." Cigarettes were shown in 35 per cent., drink in 50 per cent., and gun play and murder in 50 per cent. "Deceit, intrigue, jealousy, or treachery was a leading feature in at least 40 per cent. of the programs presented." [1]

In accordance with the results of the surveys which we have reviewed, we may say without exaggeration that approximately 20 per cent. of the films shown in this country tend at least in part to have a harmulf effect if moving picture audiences are in any way influenced by that which is continually put before them. The fact that possibly 50 per cent. of the motion picture films are likely to have some beneficial effect does not prove that the harmful plays should be disregarded. Violations of standards of conduct which must in the nature of things result in similar conduct are frequent under existing conditions; more frequent than is

[1] House of Representatives, *Hearings before the Committee on Education*, January 13, 1916, p. 9.

necessary, as has been shown by the fact that boards of censorship have eliminated many in the districts where legal provision is made for such work. Considerable weight must be given to the peculiar circumstance that the motion picture industry, one of the largest manufacturing industries in the country, has not fought facts with facts. No adequate refutation of the results of the various investigations has ever been offered. Until present conditions are altered it cannot be offered. The industry cannot afford to become entangled in an argument in which its members would be compelled to argue against their personal beliefs and the facts in order to show that their choice of plays, the result of a box office policy, is not in a large percentage of cases contrary to the accepted social standards.

IV

Effect of Motion Pictures on the American People

It should be sufficient in order to indicate the harmful effects of motion pictures to point out the number of people who attend and the kind of picture they see, as has just been done, but in order to emphasize the practical consequences of motion pictures some evidence should be cited to demonstrate that the effectiveness of the discussion does not depend solely on a belief in determinism. All of the observations cited below are of children, for the scientific, observational and experimental attitude towards the problems of motion pictures has not been utilized in dealing with adults, and we must therefore establish our point in so far as they are concerned, using the deterministic doctrine as the foundation. With regard to children, however, there is an abundance of evidence on which to base estimates of the desirability or undesirability of the films which are now being exhibited.[1]

[1] "Some of the most graphic accounts of the influence of pictures have come from personal interviews with offenders, where in detail the vivid nature of the mental process is exposed. Nor do we have to turn to offenders merely to prove this point. Most of us have had like experiences. A prominent educator, a man of active mind and purity of thought, tells me that one of his main regrets is that he once saw a certain pornographic sketch. It was indelibly impressed. Offenders we find, ... have sometimes been fairly obsessed and impelled by the character of pictures seen. In this matter, too, the pervasion of the sex element makes the chance of future representation all the stronger on account of natural impulses in that direction. The combination of sex offenses with other criminality forms an unusually virulent admixture for later mental depiction.

"When it comes to motion pictures we have added elements of force for the production of either good or bad. Not only a single event, but chapters from life histories are depicted. Not alone is one action or posture depicted, but there is added all of the motor phenomena active through a period of time. The act is not suggested; every detail of it is made clear. The breaking open

The motion picture interests do not hesitate to lay claim to being benefactors of humanity in that they are, through their industrial and other educational films, broadening the horizons of many who would otherwise be limited by lack of facilities for obtaining information more directly; that they are stirring many to action through their illustrations of ideal life and achievements; that the numerous religious pictures, and others, are sermons more powerful than any spoken word from the

of a safe, the holding up of a train, the effort at suicide are all presented in such fashion that it is bound to recur as a memory picture of detailed events, if there is any tendency or opportunity for its mental reproduction. Added force comes from the concrete issues which are represented.

"We have had much evidence, sometimes in remarkablw ways, that moving pictures may be stimulating to the sex instinct. We should expect pictures of love-making and similar scenes to have this effect on young adults or older adolescents, but we have very strikingly heard of it in children. The effect is not only felt at the moment, but also there is the establishment of memory pictures which come up at other quiet times, such as when the individual is in bed. We have found that bad sex habits sometimes center around these pictures. In some instances a very definite mental conflict ensues, with production of delinquency along other lines.

There can be no fair consideration of the whole subject of moving pictures unless we remember that, after all, the amount of delinquency produced by them corresponds but slightly to the immense number of pictures which are constantly shown. This partly tends to show the innocuousness of the greater number of these pictures, but it also brings us back to our old question of personal equation. Some individuals are susceptible to pictorial suggestions and others are not. However, there is no excuse for showing pictures which damage the morals of any one.

The main hope for the prevention of these undesirable effects will be found in rigorous censorship of perverting pictures, and in radical prosecution of those who produce and deal in obscene and other demoralizing pictorial representations. Never have we heard one word indicating that bad effects have arisen from representations that could in any way be interpreted as productions of art. The type of thing we mean is altogether unsavory, and obviously manufactured for its appeal to the passions, or to other unhealthy interests."—Healy, William, *The Individual Delinquent*, p. 307ff. See p. 241ff for cases showing effect of mental imagery.

pulpit or platform.[1] The trade journals are at present boasting that the industry can become a power in politics through the judicious use of the screen. One of their strongest arguments against legalized censorship is the influence which they say will be wielded by censorship boards through the elimination of scenes which might create an atmosphere unfavorable to the party in control. In view of these claims it would seem to be a difficult matter for the industry to defend itself by denying the effect from the films which they are not so proud to own.

There is no lack of authenticated individual instances of misconduct resulting from the suggestion or instruction of motion pictures. "Michigan's experience tallies with that of Illinois as a revelation of the need of better motion pictures for all theatres in the state. A survey of the situation in Detroit was made by the city federation with astonishing results. Vice and crime were increasing so rapidly that the judge of the juvenile court was led to investigate the habits of juvenile offenders appearing before him for the first time. In an open letter to the Chairman of Civics of the Michigan Federation the judge said that in a large percentage of cases the suggestion had come to these young offenders through the motion picture."[2] This quotation is taken from a talk by Mrs. Albert E. Bulson, part of which was included in the report of the Fourteenth Biennial Convention of the General Federation of Women's Clubs, and indicates that a direct relation does exist between

[1] The National Board of Review of Motion Pictures considers as one of its most important duties the issuing of selected lists of pictures having educational and moral value. Mr. Orrin G. Cox, Secretary of the National Committee for Better Films, argues that since a large percentage of the patrons of motion picture theatres are under twenty-one years of age and therefore readily subject of suggestion, much good could be done through constructive measures for the improvement of programs by means of co-operation on the part of the community with the local exhibitors.—From a carbon copy of an article by Mr. Cox which was sent to the author as an argument against censorship by the National Board of Review of Motion Pictures.

[2] *Report of the Fourteenth Biennial Convention* of the Genreal Federation of Women's Clubs, 1918, p. 450.

motion pictures and crime. Another quotation from the same talk gives an example of a less frequent but none the less important type of effect of the lower order of pictures. "To my knowledge," says Mrs. Bulson, "a young school boy after having witnessed a film called 'Mothers, Protect Your Daughters', secured a certain drug and asked another boy to go with him and secure a couple of girls to experiment upon with the drug. The mother of one of the boys obtained the bottle and gave it to a physician who verified the statement made by the boy. This film might be used as a warning to a girl, but I question the advisability of exhibiting the methods used by white slavers to our adolescent youth." The first quotation referred to the possible effects from the general suggestive influence of motion pictures; the latter, to a more direct influence, that of instruction in method.

A report issued in 1920 by the National Board of Review presents the results obtained by a questionnaire which was sent to probation officers in cities in the United States of over ten thousand population which had juvenile courts. This report is entitled "Motion Pictures Not Guilty," and claims to be a verdict based on the questionnaire in relation to motion pictures and juvenile delinquency. The verdict is that there is a "surprising lack of evidence of direct responsibility of motion pictures for juvenile delinquencies." Forty-two replies were received. Of these forty-two, twenty-seven asserted that to their knowledge "motion pictures were not directly responsible, to any appreciable extent, if at all, for juvenile delinquency." Ten gave no definite answer to the question of responsibility, due to a lack of direct evidence to support an affirmative answer, and not being willing to absolve the motion pictures entirely. Five said that motion pictures were directly responsible for an appreciable amount of juvenile delinquency. On the basis of these figures the verdict of "not guilty" is reached. Is it justified?

If the verdict is interpreted in the strict meaning of the words in which it is expressed there is sufficient evidence for its justification. The report only says that motion pictures are "not directly responsible" for juvenile delinquency in an appreciable

number of cases, which may be true. It gives the impression to the careless reader, however, that motion pictures do not enter into juvenile delinquency as an appreciable factor. The title of the report, "Motion Pictures Not Guilty," seems designed to give this impression. Quoting from the report itself, the twenty-seven probation officers who are lined up as exonorating the pictures only said that "motion pictures were not directly responsible, to an appreciable extent", for delinquency. The ten who were non-committal on account of lack of records for convicting the movies, nevertheless had a feeling that they might be "sometimes directly to blame." The individual reports have not been available for examination, but the statements quoted are the statements on which the verdict of "not guilty" was based in the whitewashing report. They are an indication of its weakness.[1]

The same report quotes from the cinema inquiry in Great Britain and from an investigation by Mr. E. M. Barrows of cases of juvenile delinquency in New York City in which the "movies" were held responsible. Both of these quotations, while tending to show that the "movies" cannot be held as the direct cause of delinquency except in a few scattered cases, refer to the "large number of cases in which the 'movies' were held responsible by policemen, judge sand reformers" and to the generally held opinion of those who deal with children that motion pictures are an influence in the moulding of the lives of their charges. If the report does nothing else, it certainly establishes this last point, which, after all, needs little substantiation.

A more scientific piece of work is the investigation conducted by the Chicago Motion Picture Commission, the results of which were published in detail in September, 1920, as a part of the general report of that commission. Professor Ernest W. Burgess of the University of Chicago supervised the investigation, which was also conducted by the questionnaire method. Questionnaires were sent to the teachers and principals of the

[1] National Board of Review, *Motion Pictures Not Guilty*, New York, 1920.

Chicago schools, and the tabulations of returns were made from the reports of two hundred and twenty-three people, some of whom were principals of schools having an average attendance of about one thousand children. Only a few of the two hundred twenty-three returns were made by teachers, since in many cases the principals made out the questionnaires on a basis of reports made to them by the teachers under them. At the committee meeting at which Professor Burgess delivered his final report, there were thirteen principals present, representing about thirteen thousand children. This indicates that the two hundred twenty-three questionnaires whose reports were tabulated represent more children than would be expected had they been only the returns from grade teachers. They contain only opinions, but they are opinions which can be depended on as the best available, coming from those who are sincerely interested in the children's progress and who are in a position to observe and interpret the facts.

It was found that in twelve schools of the one hundred twenty-five represented by the questionnaires, the attendance of motion pictures by the children was infrequent, and it is explained that this infrequency was due possibly to inaccessibility of motion picture houses rather than to lack of desire. One hundred and twenty-five teachers reported that their children attended the movies from two to four or more times a week. Ninety placed the ordinary attendance at one or two times a week. In so far as the effect of motion pictures on school work was concerned, thirteen teachers reported "no effect," while twenty-eight declared the effect to be predominantly "educational". Five said the effect depended on the film, and eighteen did not answer the question. Thirty-seven believed that attendance at motion pictures accelerated mental development or improved the general information of the pupils. The rest of the two hundred twenty-three teachers and principals believed the effect of motion pictures on school children to be harmful through retardation of mental powers, general interference with school work, rendering the children nervous and excitable, lowering vitality, and through tendency to have other undesirable effects.

The information concerning the general moral effect of the movies is significant when considered in the light of the attendance figures just mentioned. Thirty-three teachers and principals believed that they had no moral effect, thirty-three believed that it depended on the film, which is of course true, and two stated that the general moral effect was good. In opposition to these, fifty-one were of the opinion that the effect was "generally bad," sixteen that lawlessness and disrespect were promoted, sixteen that a craving for excitement was induced, nine that "boy bandit" and robber games were created, and nine that the "brazen, boy-struck girl" was a frequent result. All of the two hundred and twenty-three not included above also believed the general moral effect to be undesirable.

Direct questions were asked concerning the effect of motion pictures on sex life and respect for authority. The consenus of opinion was that the children became precocious about sex matters, that there was a general demoralizing effect on modesty and purity, that a disregard of marriage ties was fostered, and that the authority of teachers and parents was materially lessened. On hundred and eighty-three favored a board of censors as at least a partial remedy for the situation, forty-two were non-committal, and only eight favored some other plan of regulation. Apparently none were in favor of allowing public opinion to be the only control of the movies.

The author has personally interviewed a number of Philadelphia social workers in an attempt to make certain that there is an appreciable effect of motion pictures on the people. A well-defined opinion existed that there were wide-spread effects, good as well as harmful, but that since the cases handled by the social agencies visited in the main the cheaper houses which show the more questionable films, the effect on the group observed by them was possibly more harmful than otherwise. Speaking for the country as a whole, this is probably not true, and there is little reason to doubt that the total good effect is greater than the total evil effect, for we have seen that at least three-fourths of the films do not show flagrant violations of social standards.

It is difficult to estimate the benefits which we reap from our contacts with the movies; it is much easier to point out evils, and it is much easier to call attention to the evils than to arouse public interest in the advantages, which do not hold the attention without effort. A distorted perspective results, but however much the perspective is distorted, there is some actuality in the view presented to us. Motion pictures do influence those who see them, possibly not always directly, but by gradually forming or altering ideals and their consequent conduct.

V

The National Board of Review of Motion Pictures

In 1907 and 1908 two investigations were made of the moving picture situation in New York City, one by a joint committee of the People's Institute and the Women's Municipal League, the other by the city police commissioner. According to subsequent reports of the National Board of Review, "in both cases the findings demonstrated that, in spite of some defects in subjects and treatment, the large majority of films were wholesome." The exhibitors appealed to the People's Institute for aid in cleaning up motion pictures in answer to insistent public demands for improvement, and the plans resulting from their consultations have materialized into the present National Board of Review of Motion Pictures.

The basis of the National Board are the principles that the screen has a right to freedom, that there can be no absolute agreement of opinion as to what is "precisely moral and what is precisely immoral," or as to "where questions of taste and morals overlap," that public opinion, "which is the compound of all tastes and all ideas of morals is the only competent judge of the screen," that there can be no proper functioning of public opinion unless freedom of the screen exists in order that the public may judge what shall be presented to it, and that as result of these principles, the only just censorship is that which is voluntary on the part of the censor and the censored, and is consequently in accord with the dictates of public opinion. In illustrating these ideals, the Board cites the example that every newspaper is censored before publication by the blue pencil of the editor who will not publish that which runs counter to the public taste. The idea is that the National Board is the blue pencil for the motion picture industry and is more susceptible to fluctuations in the public tastes, and more easily reversed when in error.

The mechanical means for the carrying out of these principles are a number of committees of disinterested volunteers, serving

without pay, and a limited staff of paid workers for the routine duties which require more or less constant attention. The main committees of volunteers are the Executive Committees, the General Committee and the Review Committee. The range of their duties is indicated by their titles with sufficient accuracy to obviate the necessity of explanation. The staff consists of six secretaries, known as the Executive, Advisory, Review, Corresponding, Membership and Assistant Review Secretaries, whose duties are also roughly indicated by their titles.

The original purpose of the Board was to censor all pictures before they were shown in New York City. Since June, 1909, however, the scope of its activities has been broadened to include the entire United States, and representatives, purely voluntarily, keep the organization in touch with the various sections of the nation. Its name was originally "The National Board of Censorship of Motion Pictures," but due to a certain amount of odium which has attached itself to the word "censorship" in the minds of many people, and to the fact that a voluntary organization which has little legal sanction or authority to compel obedience to its decisions can hardly be said to do any censoring, the name was soon changed to "National Board of Review of Motion Pictures."

The original purpose of the Board, however, is no longer its only purpose. Censoring, or better, reviewing, is still its most important work, but a second type of service is now being performed. Censoring is a purely critical function in that its purpose is to disapprove of certain more or less definitely defined types of pictures. The second service performed by the National Board is constructive, and "involves co operation with all of the forces seeking the improvement of the photoplay both dramatically and socially." Its general nature is illustrated by such samples of its work as issuing selected lists of motion pictures for various purposes, such as its lists of *Best Motion Pictures for Church and Semi-Religious Entertainments*, *Pictures Boys Want and Grown-Ups Endorse*, *Industrial Motion Pictures*, *A Partial List of Film Subjects on Health, Disease, Nursing and Allied Topics*, *Motion Pictures Aids to Sermons*, *Dramatic Photoplays*

on Standard Literature, American Poetry and American and French History, Forty Best Photoplays of 1920, Industrial Motion Pictures, Monthly List of Selected Pictures, and others. This selection is done under the direction of the National Committee for Better Films, which is a part of the National Board of Review. Its aim is to secure better films through co-operation with the forces which influence the trend in the production of films and achieve results through selection rather than through censorship.[1] In the last analysis the National Board of Review seems to put little faith in censorship as a means of improving pictures, and it is difficult to understand how any other attitude could be taken, since it itself is an organization which, though created primarily for censorship purposes, is of necessity driven to other methods of action by its lack of power to compel obedience, legally or by public opinion.

The National Committee for Better Films, however, does not feel that its constructive program should end with the selection of desirable films and the publishing of lists of those suitable for various purposes, but has attempted to evolve a plan whereby the selections will result in the more frequent showing of the better class of picture. In answer to numerous requests a brief outline has been prepared illustrating the manner in which communities may take full advantage of the opportunities offered for the improvement of film standards in their locality. Co-

[1] "Fine pictures—inspiring in theme, realistic in acting, satisfactory as to entertainment value and moral quality—pay. The public is forever speaking its mind effectually. The selection of motion pictures, therefore, is always unconsciously going on. This selection, however, is accelerated by the careful choices made by the National Board of Review, by the writers, by the distributors and the exhibiting managers.

"This process is far more effective than any system of censorship. Our laws forbid the publication of any libelous, obscene, indecent, immoral or impure picture or reading matter. Strict law enforcement and selection are the best consorship. They demonstrate the absolute uselessness of arbitrary state and federal censorship."—National Board of Review of Motion Pictures, *A Garden of American Motion Pictures*, January, 1920, p. 3.

operation is the first principle advocated in the program. All interested people, including the exhibitors, should be brought together to discuss selected pictures. The possibility of special programs for family nights, composed entirely of pictures known to be up to the highest standards through the endorsement of the National Board of Review, should be considered, and if difficulties arise, correspondence with the National Board is invited. Publicity for these family night programs must also be arranged on a co-operative basis. Some plan for bringing people to these arranged entertainments must be evolved, since special programs cost extra money, and the exhibitor cannot be expected to undertake them without compensation. Above all, a "well considered system of education of parents to develop a public sentiment both for finer family pictures and for selected pictures for young people" must be carried on. "The primary responsibility for attendance at motion picture entertainments rests upon the shoulders of the parents of the town." "There must be supervision and there must also be a recognition of the fact that most film dramas are made for the entertainment of adults."[1] This plan is said to have the whole-hearted co-operation of the motion picture theatre owners of America, and is worthy of more co-operation than it actually has from all classes of interested citizens. It is not, however, an adequate substitute for legal censorship for it provides no means of control in communities which do not happen to care for selected pictures.

The National Board of Review always has been a substitute for legalized censorship, a means of satifying both those who are working for better movies from the point of view of their moral effect and those in the industry who do not desire legal supervision of too detailed a nature. It is a compromise between

[1] National Board of Review of Motion Pictures, *Selected Pictures in the Theatres*, May, 1921.

Bulletin of the Affiliated Committees for Better Films, Vol. V, No. 5, May, 1921.

Nunerous other publications of the National Board also stress this plan of community co-operation functioning through selection rather than through censorship.

freedom from legal supervision of motion pictures and federal, state or local censorship by legally appointed boards. As a compromise without legal sanction in all except a few localities it permits most of the compromising to be done by one party, and places no absolute restrictions on the industry, which is left free to submit its films for decision to the National Board or not, as it sees fit. By its own claims, it views not more than 99 per cent. and in actuality probably considerably less of the annual production of motion pictures in the United States, and it has no adequate authority over those it does view. When the number of feet of film produced runs into the millions per year, the one or more per cent. which is not viewed is not negligible. But granted that it were negligible, has the 99 per cent. been in any way improved, or rather, has it been handled as well or better than it would have been by state or other boards of censorship?

It is possible to compare the actions of state boards of censorship with the actions of the National Board of Review on the same films. An example would not be out of place. Doctor Twombley, who has been previously mentioned, compared 228 films which had been examined by both the Pennsylvania State Board of Censors and the National Board of Review. In these films the Pennsylvania Board made 1,464 eliminations in accordance with their standards as mentioned in a previous chapter and given in detail in the appendix. The National Board of Review in these same 228 films made only 47 eliminations. Out of 16 films condemned as a whole as being so thoroughly undesirable that it was impossible to make eliminations so that they could be passed, none were condemned by the National Board, and only 2 eliminations, both of a minor nature, were made.[1]

[1] Chase, Wm. Sheafe, *Catechism on Motion Pictures*, New York, 1921, p. 24.

The following quotation from a published address delivered by Doctor Twombley at the forty-second annual meeting of the New England Watch and Ward Society at Trinity Church, Boston, Mass., on April 11, 1920, is an indication that such discrepancies between the work of the National Board of Review and the Pennsylvania Board are the rule rather than the exception.

This difference of opinion between the two boards is all the more remarkable when it is considered that the official standards of the two organizations, as stated in the official publications of each, do not vary to any considerable extent save in phraseology.

The expenses of the National Board of Review do not run very high since the workers are for the most part unpaid. In 1920, $17,224.33 was spent in reviewing pictures. This figure includes the expenses involved in maintaining offices and distributing information concerning the judgments of the board to the cities and communities which co-operate with it. In the same year $20,717.93 was spent on the constructive part of the program, and was used in paying for traveling expenses, printing, publications, and other work of a constructive nature. The receipts for the same period were $38,296.74, and were derived from a flat rate per reel for viewing pictures, from membership fees, and from general contributions.[1] Little of this income on which the continued existence of the board depends seems to be independent of the good will of the industry which is submitting to be censored. Provision is made whereby no member of the reviewing committee may be in any way connected with the motion picture industry, and the claim is thus made that decisions cannot be influenced by producers. This does not necessarily follow, for it would not be an entirely unreasonable course of action on the part of viewers, consciously or otherwise, to be as lenient as possible so as not to ruin any effectiveness the board might have by incurring the ill will of those who support it. Cases in which economic depen-

"In 178 films examined some time ago, the Pennsylvania Board of Censors made 1,108 eliminations of objectionable scenes of immorality and lust and indecency of all kinds. In the same 178 films, the National Board of Review *recommended* 41 eliminations only!

"A new comparison made only this last week between the work of the Pennsylvania Board and that of the National Board in New York, shows 329 eliminations in 50 films by the Pennsylvania Board, and only 6 by the National Board in the same 50 films."

[1] *National Board of Review of Movion Pictures, Activities of*, New York, January 1, 1921, p. 10.

dence has influenced actions in regard to the source of supplies are not rare, and one cannot help but feel suspicious in this case in view of the wide disparity of action shown by the above comparison of the work of an independent and a dependent body of reviewers.[1]

Aside from the question of economic dependence, even though the expenses of the National Board were to be paid from some other source then they are at present, is it within reason to suppose that producers would continue to submit pictures if the percentage of eliminations recommended were much greater than it is at present, or, if they did submit their productions for approval, that many more eliminations would be made if recommended? As a question of expediency, it would be of doubtful wisdom for the board to recommend many changes in the pictures presented to them for the reason that producers do not take kindly to the wasting of their financial investments and would disregard the edicts of the board in a ratio directly increasing with the stringency of enforcement of the established standards.

[1] The advocates of the National Board of Review as the most advisable means of regulating motion pictures have made considerable use of the approval given their plan by the New York State Conference of Mayors in 1920 as evidence in their favor. The personnel of the committee whose report was adopted by the Conference is worthy of attention. Of the thirteen members of the general committee, the names of three appear on the stationery of the National Board, though two of these are listed as representing other agencies. The secretary of the committee, though not a member of it, was a member of the National Advisory Committee of the National Board although this was not mentioned as one of his qualifications. Three other members represent the motion picture producers, exhibitors and distributors and are so listed. Another member who was chairman of a sub-committee on state censorship which condemned it as a means of control, was a well-known author who has been noted for his violent attacks on any form of censorship. The other members of the committee seem to have been of a more or less neutral type. In view of these facts the conclusions reached do not seem surprising. See, New York State Conference of Mayors, *Report of Special Committee on Motion Pictures*, Albany, N. Y., February 24, 1920.

The National Board of Review seems to be in favor of preventing previewing of motion pictures by legal boards of censors by substituting for such regulation the enforcement by state and city officials of its own decrees. It offers its services to cities and states for co-operation in such legislation which in fact is not so different from the type of regulation which it so strenuously opposes except that in the case of legally constituted boards judgments are made by responsible officials while in the case of the co-operation plan the previewing is done by volunteers who are in no way subject to legal supervision, nor can they be held responsible to anyone for their acts.[1] Florida prevented the passage of a state censorship act by prohibiting the showing in the state of any pictures which had not been passed by the National Board.[2] Boston and a number of other cities have adopted similar plans.[3] In these cases one of the strongest

[1] A model ordinance for city, town or village, favored by the National Board of Review, providing for the enforcement of its decisions, is included in the report of the special committee on the New York State Conference of Mayors appointed to make an investigation into the regulation of motion pictures. This report was submitted to, and adopted by the Conference at the semi-annual meeting held in Albany, N. Y., February 24, 1920.

[2] *Bulletin of the Affiliated Committees for Better Films*, Vol. V, No. 7, July, 1921, 4.

[3] Mr. John M. Casey, Chief of the Licensing Bureau of the City of Boston, who has charge of the regulation of motion pictures in that city, in a letter under the date of March 9, 1922, has explained the system as follows:

"The State by legislation authorizes the Mayor to grant licenses for all amusements in the city 'under whatever terms and conditions he may deem reasonable,' and one condition that applies to the exhibition of moving pictures is, 'that all films intended for public exhibition must be approved by the National Board of Review.'

"The principal reason for this condition lies in the fact that we feel that the National Board of Review, by the decisions of its reviewers, more nearly voices public sentiment than has been given by any other method."

See also, John M. Casey, *The Boston, Mass., Method of Motion Picture Regulation*, an address read at the Conference of City Officials and National Board of Review, New York City, October, 1919, issued in pamphlet form by the National Board of Review in 1919.

objections to the National Board is removed since its decisions are given legal force, but the other defects inherent in the National Board and the fact that if there is to be any previewing done there seems to be no reason why a voluntary board should be able to do it more efficiently than one paid by and accountable to the state, render the well meant proposal inadvisable.

One indication of the influence which seems to have been exerted on the works of the National Board is its attitude on the question of censorship. It is openly opposed to legalized censorship and actively fights any proposal to establish it in any state or community. Mrs. Albert E. Bulson, past president of the Michigan Federation of Women's Clubs, is on record as having said that "telegrams and letters came pouring in to our legislators, my officers and myself with offers of speakers who would present the matter from the standpoint of the producers, when a censorship bill was being argued in the Michigan legislature.[1] It was "the effort put forth by the National Board of Review of Motion Pictures to spread propaganda against any kind of censorship" which helped accomplish her conversion in favor of censorship.[2] *Objections to State Censorship of Motion Pictures*, *Repudiation of Motion Picture Censorship in New York City*, and *The Case against Federal Censorship of Motion Pictures* are the titles of three of many pamphlets sent the author by the National Board of Review. All of them were published by the National Board. Several investigations of the moral effects of motion pictures, elsewhere discussed in greater detail, have been made by the Board, one of which certainly failed to convey an accurate impression of the findings.[3] More direct evidence is not at hand, but the general impression of those who are independently working for better movies that the National Board is not entirely a free agent apparently has some foundation in fact.

[1] Mrs. Albert E. Bulson, in the *Report of the Fourteenth Biennial Convention of the General Federation of Women's Clubs*, pp. 450 and 451. 1918.

[2] Mrs. Albert E. Bulson, *op. cit.*

[3] National Board of Review, *Motion Pictures Not Guilty*, New York, 1920.

We may, then, without impugning the motives of the volunteer workers of the National Board of Review, summarize by saying that the value of such an unofficial organization is much to be doubted, in view of the fact that its existence may too easily be jeopardized by those whom it is supposed to regulate. It has been held up as a substitute for state censorship. It can never fulfill that role. Its decisions cannot be enforced. Public opinion is the only power which it claims to have behind it throughout the country, and public opinion is far from being unanimous in giving its support to anything. Its decisions therefore will not be binding unless the exhibitor wants it to be binding, which is an unsatisfactory state of affairs, or in those scattered districts where the people know and are willing to abide by the rulings which are distributed to a number of communities by the board, which again is a situation not above criticism.

This does not mean that the National Board of Review has no function it can perform in the process of bettering conditions in the motion picture industry. It means that a negative policy cannot be carried out against exhibitors who believe they can make money by violations of the negative decisions unless some higher authority stands behind those decisions with the power to compel obedience. If the National Board of Review wishes to aid the "better movies" campaign it must emphasize its constructive policies. Its program must be one of education, of education of the public and the industry. The Public must be told what are the better pictures, which ones are suitable for religious, educational, children's amusement, community health and other purposes. It is said that only one-third of the projection machines in this country are owned by theatres, the other two-thirds being owned by individuals, schools, churches and other similar organizations. The National Board of Review has here a large field to till, in that it may develop its present constructive program and assist in directing the programs of these machines. It may also direct the attention of the public to the better type of picture to be seen at motion picture houses. It may continue in its endeavors to ascertain the type of better

picture which the public wants and will pay for. It may aid in showing the light to the producers who still believe that the grosser sex play is the most paying proposition. It may advise legislators, furnish data on the probable effects of proposed legislation, advise voters on sound bases of facts as to the probable effect of their ballots on motion picture problems. There is no end to the possibilities which lie before the National Board of Review if it pursues a purely constructive program and abandons its negative policies to the organization which is best fitted to carry them out, the government. It may be said that the recent activities of the National Board of Review show a decided tendency to emphasize the work for which it is best adapted.

VI

Federal Legislation

Most of the Federal legislation which has been enacted concerning motion pictures has been tax legislation. Probably the heaviest of the taxes has been the 10 per cent. tax on admissions which was levied in 1918, and which applies not only to motion picture theatres but also to all admissions to places of amusement, such as legitimate theatres, baseball games, concerts, cabarets and other similar places. The government collected over $89,000,000 from this source during the fiscal year ending June, 1921.[1] Possibly three-fourths of this amount was contributed by motion picture theatres, according to the best estimates available. It is regretable that the Treasury Department has found it impossible to separate the amounts paid by the various kinds of places of amusement which pay the 10 per cent. tax since such figures would furnish a valuable index for the estimation of the condition of the industry from period to period. We are again faced with the problem resulting from the utter lack of available statistics concerning the motion picture industry as a whole, and until such figures are available no accurate or final determination of the effects of taxation or other business influences can be made.

The industry is of course also subject to other revenue measures by the Federal government.[2] Export and import duties have been levied on raw and exposed film, cameras and other mechanical appliances necessary to the trade. These are still being fought and defended. There is nothing new in the discussion, which is only a repetition of all of the old high and low tariff debates. A 5 per cent. tax on the monthly totals of film

[1] Commissioner of Internal Revenue, Annual Report, 1921, p. 90.

[2] See, Cannon, Lucius H. *Motion Pictures, Laws, Ordinances and Regulations on Censorship, Minors and Other Related Subjects*, St. Louis Public Library, July, 1920, p. 124.

rentals has just been repealed by Congress due to the insistent and practically unopposed efforts of leaders in the trade who were able to devote much of their time to lobbying in Washington during the past legislative session. This film rental tax, which together with the 10 per cent. admissions tax on ten cent admissions, has been ineffective since January 1, 1922, was one of the most bitterly fought taxes levied on motion pictures. The contention usually offered was that it was overburdensome and too great a handicap to be successfully borne, though the industry seems to have developed at an extraordinary rate even while it was enforced. The payment of taxes always hurts, especially when they are as direct as the 5 per cent. film rentals tax and the 10 per cent. admissions tax. The clamor against these "confiscatory measures" should therefore not be taken too seriously.

Another type of federal legislation is that designed to protect the military from ridicule and defamation. This legislation forbids the wearing of any American military uniform by a motion picture actor in a play in which his conduct would be such as to lower the respect for the service. This would hardly be worth mentioning in a social study were it not for the fact that its enforcement has been strict though no special means of compelling conformity were provided by the act. The government has been able to enforce this legislation because public opinion has been unquestionably back of it and because no particularly great profit can be made by its violation.

Motion picture plays may be copyrighted under the laws of the federal government upon compliance with practically the same requirements as are imposed on the authors of books or articles and on photographers. The court decision which has had the greatest effect on copyright rights has been that of the United States Supreme Court in which it held that a contract transferring the production privileges for presentation on the legitimate stage of a literary work did not necessarily transfer the motion picture production privileges unless specifically so stated in the contract. There is adequate protection granted to motion

picture producers and little or no complaint is evident from any source in regard to this phase of Federal legislation.[1]

Immoral motion pictures are classed for purposes of Federal regulation with immoral books, pictures and other indecent matter, and the penalty for bringing them into the country or for transporting them from one State to another is set at $5,000 fine or five years' imprisonment, or both. The only statute definition of what constitutes an immoral film is the phrase "obscene, lewd, or lascivious, or any filthy. . . . . motion picture" which has been considered by the courts to be an adequate definition for legal purposes, though claims are still being made that the vagueness of similar phrases in State legislation renders them unconstitutional. Pictures of prize fights, or "pugilistic encounters, under whatever name," are also forbidden to be brought into the country or transported from one State to another to be publicly exhibited, and a penalty of not more than $1,000 fine or one year imprisonment, or both, is provided. Otherwise no Federal provision has been made for the protection of the public morals from possible undesirable motion picture films.

Of the two statutes quoted in the above paragraph, the one prohibiting the transportation of prize fight pictures is the most effectively enforced. This is undoubtedly due to the strictness of definition of the forbidden act. "Prize fight" is a definite phrase, and admits of little quibbling over the meaning and interpretation of the law, and cannot be misunderstood even in the absence of a special interpretative body. In spite of the clarity of the law, it has recently been evaded by showing everything connected with a world's championship fight except the actual fighting. This evasion is strictly within the letter of the law, and could not be prevented under any censorship act as yet devised. Similar situations have arisen before State censorship boards in the cases of murders, where, for example, the pointing of the revolver, the raising of the knife, are permitted, while the precise moment of the killing is deleted.

[1] *Wid's Year Book*, New York, 1920, pp. 305, 331, 333.

This seems a mere quibble over technicalities, yet it is difficult to see how further restrictions could be imposed without danger of foolish prudishness, even if it were unquestionably desirable to do so. It would seem that with this exception to the enforcement of the meaning of the act that its enforcement should hardly be called effective, yet it is effective, but not due solely to the efficiency of the enforcement officers, though their work has been of the highest type possible under the existing legislation. It is the better type of theatre which has aided in enforcing the law by refusing to show pictures which are uncontrovertibly forbidden. With motion pictures under fire as they are at the present time, owners cannot afford to endanger their cause by flagrantly violating Federal statutes with no chance of contending that they have actually complied with them, as has been done in the case of the laws against immoral pictures. This voluntary conformity may also be due to personal desire to keep in accordance with the law, and in many cases this undoubtedly is the motive for refusing to show pictures illegally. Whatever the reason, few exhibitors will show pictures which they have been definitely forbidden to show, and it is for this reason that the legislation against the exhibition prize fight is being obeyed in most cases.

These motives, however, are effective not for all theatres but for a majority only. There will always be a considerable number of theatres on the fringe of the trade which will show anything for profit, and it is these theatres which can never be reached except by some highly efficient legalized body whose primary duty is to do the reaching, and who will be held accountable if they fail. The Federal government provides no such body.

The five state boards of censorship annually make thousands of eliminations from the motion picture films presented to them for approval. In Pennsylvania alone from the first of December, 1917, until the last of November, 1918, out of 11,460 reels of film of a thousand feet each, 450 were condemned. Including minor eliminations, during the same period 6,142 cuts were made. One hundred and eight subjects were condemned and 157 subjects were reconstructed. From March, 1917, until

October, 1918, there were over 125 prosecutions by the Pennsylvania Board of Censors in which fines were inflicted for the illegal showing of pictures. Statistics for Kansas, Maryland, Ohio and New York show proportionate eliminations and prosecutions. We have seen the standards on which these eliminations are made. Unless the judgments of the state boards are greatly at fault, the Federal legislation prohibiting the transportations of lewd, obscene, lascivious and filthy motion pictures is little more than an obsolete blue law.

There is little probability that in its present form it will ever be anything but a dead letter law. The terms used in it are subject to various interpretations, or, rather, specific scenes and subjects may or may not be in violation of them, depending on who is doing the deciding. It has been found necessary to have an Interstate Commerce Commission to put transportation legislation into effect. The Federal Trade Commission has turned out to be a useful body. The courts alone were unable to handle the duties which have been out of necessity given over to these commissions. The courts and their subsidiary officials have proved themselves incapable of handling the motion picture situation as is evidenced by the large number of eliminations and prosecutions which it is necessary for the few state and city boards now in operation to make, though their operations in no way interfere with the operations of Federal legislation on the subject.

Bills have been introduced into Congress proposing to establish a national division of film censorship under the Bureau of Education, and to define more accurately the things which shall be excluded from interstate commerce. They have all failed of passage. It was best that they should. In 1920, for example, a bill was introduced in the House of Representatives to prohibit the carrying of films showing or simulating the acts of "ex-convicts, desperadoes, bandits, train robbers, bank robbers, or outlaws." During the same year Senator Gore introduced a similar bill in the Senate. It would have been of doubtful wisdom to pass either bill, for there is little reason to believe that their enforcement would have been more successful

than the laws already covering the subject unless some radically new measures were taken.

Representative D. M. Hughes, of Georgia, introduced on December 6, 1915, House of Representatives, Bill 456, providing for the creation of a Federal motion picture commission which was to be a division of the Bureau of Education. Hearings were held by the House Committee on Education, of which Mr. Hughes was Chairman. The opposition to it as shown by the witnesses and documents against it came mainly from the motion picture interests, though there were some objections raised by those who had no apparent connection with the industry. The significant thing about the evidence introduced is that it was practically all nothing more than personal opinion, which may or may not have been correct, but which should have been supported by more evidence than was introduced. It is doubtful whether the Hughes bill was defeated on its merits, though there is a likelihood that its passage in 1915 or 1916 would have been unfortunate.[1]

Any Federal commission to censor motion pictures before their licensing for exhibition would be unwise at the present time. There cannot be said to be any general consensus of opinion in favor of legalized previewing of pictures throughout the nation, though this must not be taken to mean that there is no sentiment against the type of picture which the censor would be called upon to eliminate. Only a handful of the many states and cities in the country have censorship legislation in force, and the remainder are not yet ready to take such action, or to have it thrust upon them. By the form of our government, the general police power, under which such action would naturally fall, belongs residually to the separate states, and is in turn delegated in part by them to the local communities. Until

[1] The Hughes Bill, H. R. 456, has reappeared in practically the same form in H. R. 10, 577, "*A Bill to create a new division of the Bureau of Education, to be known as the Federal Motion Picture Commission, and definining its powers and duties,*" which was introduced in the House of Representatives on February 22, 1922, by Mr. Appleby of New Jersey.

there is a more general belief in the principle of legalized censorship, proven to exist by laws actually in effect, it would be a poor governmental policy to take a portion of the police power customarily exercised by the states and their agencies away from the governmental subdivisions which now hold it on the pretext of regulating interstate commerce. Aside from the technical administrative difficulties which would be encountered, there would be so many areas of considerable importance in which public opinion would not permit the enforcement of national censorship legislation that the resulting moral deterioration in those sections would largely offset the possible beneficial effects in others.

It may then be said that the existing Federal legislation governing the motion picture industry is sufficiently well framed and inclusive to serve the required purposes, though it is not always achieving the results for which it was intended due to lack of local co-operation and of specifically assigned enforcement officers. No unanimity of opinion on the motion picture question has been shown to exist among the forty-eight states of the Union and more stringent action of a national character is therefore not to be urged until some future date when the assumption of police power by the national government would meet with general approval. No sound objections to national censorship on grounds other than of policy have been raised.

VII

Local Legislation: *Municipal Regulation*

That the police authorities have the power to stop the showing of any picture which they believe undesirable from the point of view of the public welfare is well known. This power is frequently exercised even in states which have state supervising officials, such as Pennsylvania. A recent example of this was the ordering of the withdrawal of all motion pictures in which Roscoe Arbuckle appeared as an actor from the programs of all Philadelphia theatres by Mayor Moore on September 11, 1921, on the ground that further exhibitions of pictures in which Arbuckle appeared would tend to offend public morals in view of the charges which were then pending against Arbuckle in California. This action by Mayor Moore was similar to that of the authorities in Los Angeles, Memphis, Chicago, New York, Pittsburgh, Washington and other cities, and was taken in spite of the fact that the charges had not been proven. Other uses of the police power were made by a number of city officials in the case of films such as "The Birth of a Nation," which might have caused disturbances between races.

As a method of control of the motion pictures it has proven inadequate because the proper surveillance of pictures requires an adequate separate force and cannot properly be done as a side line duty of officials elected for other purposes; because if separate officials must be maintained for censorship it is better that they should be state than local officials in order to eliminate as far as possible the variations of standards with their consequent expense to the producers and loss of efficiency in the process of censoring; and because local officials have in the past been found to be incompetent, or undesirous of performing censorship duties

on account of either improper personal training or motives. The general tendency is to use this local power only when the danger of disturbance of the peace is great or when the picture is so grossly offensive to decency as to agitate a group of voters into definite action and thus spur the elected officials into the performance of their duties.

Local motion picture regulation has been confined to municipal regulation, due to the fact that motion picture theatres are an urban rather than a rural institution.[1] As was natural, the first censorship in this country was city censorship enforced by the ordinary police officials, and was nothing more than the adaptation of existing machinery of government to new conditions in the simplest possible way as the new conditions arose. If pictures were found to be immoral in the judgment of the city officials they were eliminated just as immoral legitimate plays were eliminated, that is, by action of the mayor or his subordinate officials. Out of this first method of meeting the problem of the undesirable motion picture has grown what is possibly the most common system of censorship in use in the United States today, that of a board of city censors acting under the city police department, frequently consisting of regularly appointed officers assigned to this special duty, responsible to the mayor for the proper performance of their work. If sufficient attention is given to the qualifications of the men and women selected for this duty it may be the most efficient method of municipal regulation due to its flexibility in operation and centralization of final authority in the hands of an accountable elective public official. Chicago, New York and many other cities have used this general type of censorship with considerable success, and there is little doubt but that if municipal censorship is shown to be desirable this system should meet with much favor in spite of the cries of

[1] A good discussion of censorship for all theatres which has added value because it was written by a man who has had years of personal experience in handling the problems of the immoral play, is contained in the article, *The Theatre and the Law*, by William McAdoo, Chief City Magistrate of New York, published in the *Saturday Evening Post*, January 28, 1922.

"graft", "incompetence", and "personal favor" which are always raised when its use is being considered.[1]

While numerous variations of this municipal censorship board have been tried throughout the country, in the principles involved and in the results achieved by them few differences of practical importance are noticeable, and these few need little consideration here for the same reason that local censorship needs little consideration in this work, and that is an objection to this type of regulation which has never been overcome, the objection that local regulation of a national institution of the importance of motion pictures is economically and socially unsound unless some centralizing control is imposed.[2] It is obviously impossible for any such control to be instituted nationally, and as yet no practical suggestion has been made for state control of municipal censorship. It is difficult to see just how any plan of state control of local regulation could be put into effect for some time

[1] Chicago, for example, has had this type of motion picture regulation. Section 1625, as amended May 24, 1915, of the City Ordinances specifies that: "It shall be unlawful for any person, firm or corporation to lease or transfer, or otherwise put into circulation, any motion picture, plates, films, rolls or other like articles or apparatus from which a series of pictures for public exhibition can be produced, for the purpose of exhibition within the city, without first having secured a permit therefor from the general superintendent of police of Chicago.

"If a picture or series of pictures for the showing or exhibition of which an application for a permit is made, is immoral or obscene, or portrays any riotous, disorderly or other unlawful scene, or has a tendency to disturb the public peace, it shall be the duty of the general superintendent to refuse such permit; otherwise it shall be his duty to grant such permit." Department of Police, City of Chicago, *City Ordinances Governing the Exhibition of Moving Pictures*. (A recent undated publication.)

[2] See, Cannon, Lucius H., *Motion Pictures, Laws, Ordinances and Regulations on Censorship, Minors and Other Related Subjects*, St. Louis Public Library, July, 1920, for examples of local regulation of motion pictures. One distinct type of local regulation, that of the enforcement of the decisions of the National Board of Review of Motion Pictures by city officials, has been considered in the chapter on the National Board of Review.

to come since in the past our political structure has not lent itself easily to the imposition of centralizing organizations on local agencies of government. The impossibility of adequate national or state guidance of the existing local governmental agencies such as the city, county, or township, forces us to the conclusion that such local regulation of motion pictures is not the most advisable form of regulation.

This does not mean that city censors should be abolished, or that they have performed no service in the past. The report of the Chicago Motion Picture Commission is sufficient to show that they are performing a most useful function. Not only are they now rendering society a valuable service, but they were also instrumental in demonstrating the desirability of legalized censorship in other forms. While they are not the most satisfactory type of regulation they are certainly better than none at all.

In a way local control of motion pictures may be compared with local option in regard to the liquor trade. Each is the first stage in a gradual evolutionary process. This comparison, with corresponding prophecies by reformers concerning the future, is not uncommon, and contains some measure of truth, but it must be remembered that in the case of alcoholic liquors the fight was against an alleged absolute evil with no important redeeming features. This is far from the case in the fight for motion picture regulation, for motion pictures admittedly contain extremely great possibilities for social betterment. In the one case the solution demanded had to be prohibition; in the other it cannot be more than reasonable regulation. Although this analogy is not entirely accurate it serves its purpose here if it illustrates the fact that however valuable local censorship is today, it cannot be regarded as anything final in motion picture legislation, but only as a stepping stone on the way to some better plan.

VIII

Local Legislation: *State Boards of Censorship*

Since it appears on the basis of the investigations discussed in the preceding chapter that at least a fifth of the motion picture plays now being shown to the public tend to have some demoralizing effect on those who see them, and since approximately twenty million people daily attend motion picture shows in this country alone, the total effect on the ideals and consequent activities is far from negligible. The four-fifths of the pictures which either have a positive tendency to create conformity to the accepted standards or which have practically no effect at all need not receive lengthy consideration in a discussion of legalized censorship. The word censorship itself implies the fact that the duty of a censor is to eliminate the undesirable rather than to direct his attention to the constructive side of the question. His work is almost entirely negative, and it is for that reason that many of the attacks against his office have been launched. The justice of such attacks may be judged by the amount of negative work which has had to be done. Frontier conditio in industry as well as in colonization demand harsh measures.

It is as a state organization that censorship has achieved its greatest importance in the United States, and it is consequently against this particular type of regulation that the most severe criticism has been levied. For this reason the general arguments for and against legalized censorship will here be discussed as a part of the state censorship battle, though many of the principles involved apply equally to municipal and Federal control. These recurrent principles will not be mentioned in support of each case to which they apply, for their application is so apparent that such repetition would be tedious and without value.

State censorship boards are supplementary to the ordinary judicial and administrative systems and do not supplant them as is commonly supposed. For example, the mayor of any Pennsylvania city has authority to forbid the showing of any picture

he believes exceptionally harmful to the public welfare notwithstanding a possible license for exhibition from the state board. The board of censors only prescribes a standard below which no picture is permitted to be exhibited. Other state agencies may compel conformity to higher standards if they wish but they may not lower the standards enforced by the state authorities, excepting the courts, which may reverse censorship decisions if they are unreasonable or unquestionably beyond the authority granted by the state legislature.

Pennsylvania was the first state to adopt the principle of motion picture censorship through a state board, and has been followed in the adoption of this principle by Kansas, Ohio, Maryland, New York and Virginia. The first Pennsylvania Board of Censors was created by the Act of Assembly approved by the Governor, John K. Tener, June 19, 1911. This act was in effect until May 15, 1915, when it was revised by legislative action. Under the reorganization act of 1915 a board of three people, two men and one woman, "well qualified by experience and education to act as censors," and residents and citizens of Pennsylvania, are appointed by the Governor for terms of three years.[1] Pennsylvania was one of the pioneers in this field, and the work of the Board has always been considered well worth studying by other censors. The act itself has furnished the groundwork for the majority of censorship acts which have since been proposed by other states and by the Federal government.

The second state to introduce state censorship was Ohio, which on April 16, 1913, passed the law creating the Board of Censors which consisted of three persons, appointed by the Industrial Commission, with the approval of the Governor, for terms of three years.[2] It is worthy of mention that this board, the second of its kind in the country, is reported to have been originated and backed by a number of motion picture men of the state.

[1] Pennsylvania State Board of Censors, "*Rules and Standards*," Harrisburg, Pa., 1918.

[2] Cannon, Lucius H., *op. cit.* p. 132 ff.

James M. Cox, who was governor of Ohio in 1913, and who strongly supported the censorship bill, gave his support to it because he desired to protect the children and young people of his state. This seems to have been the general attitude of the time, and presents a parallel to several other lines of development of social reforms. In the development of the human and scientific treatment of criminals it was the children who first attracted attention to existing evils in the penal system of Europe due to the fact that they were naturally more readily objects of sympathy than adult offenders, and the fact that it was more readily observable that the environment into which they were thrust could not help but shape their lives than it was in the case of adults. The same is true in the case of the treatment of the mentally defective and of the poor. Even today the cause of children needing assistance is much more easily pled than that of adults, though the adults might be in much greater distress. We see here the results of the belief in the doctrine of free will as opposed to that of determinism, which, while still widely believed in so far as adults are concerned, has been doubted for many centuries in its application to the immature.

Slowly but steadily censorship officials are breaking away from the idea that they are working for the benefit of children only, or for any other class of audience. The interested public is no longer basing its arguments for censorship solely on the plea that the children of the nation must be guarded. While the form of the laws passed since that of Ohio has changed but little, the emphasis in their administration and the reasons advanced in their support are undergoing fundamental changes, although little actual progress has as yet been made since the Ohio act of 1913.

Under both the original Ohio censorship act and the amendment which became effective August 27, 1915, the Industrial Commission of that state controlled the board of censors, through its power of appointment and supervision, specifically granted by the act. This authority extended down to such things as the providing of offices and equipment necessary for the carrying out of the act, and the fact that the secretary of the Industrial

Commission acted also as secretary of the board. On July 1, 1921, however, Governor Davis' Reorganization Bill abolished the Ohio Board of Censors and all its powers and duties were transferred to the Division of Film Censorship under the Department of Education. This again emphasizes the idea of child saving which played an all-important part in the establishment of the theory of censorship in the minds of those who have been interested in the work.

The first censorship bill in Kansas was passed by the Legislature in 1914, and provided a system of examination, approval and regulation of motion picture films. In 1917 the legislature created a board of three people, "resident citizens of Kansas, well qualified by education and experience to act as censors," for the purpose of regulating the showing of films. The full term of service for members of this board was, as in the case of Ohio, three years.[1] This board is the one functioning in Kansas at the present time, though a slight modification of one of the financial provisions of the act of 1917 was made in 1919 for the purpose of making the board self-supporting.

The Maryland board of censors was created in 1916, and also consists of three members serving for three years. They are appointed by the governor "with the advice and consent of the senate, and the provision is made that one of the three shall be a member of the party which polled the second highest vote at the last general election prior to their appointment.[2] This latter provision is important in its implications that the office of censor, which is a technical position and requires considerable training and soundness of judgment, is one of the spoils of war.

New York, the fifth state to have legalized censorship, has but recently joined the first four. Florida should possibly be included among the states which have censorship of motion pictures, but since the chief duty of the Florida officials is to enforce the decisions of the National Board of Review it has seemed best not to discuss the system of that state here in view

[1] Kansas State Board of Review, Annual Report of, Topeka, 1920, p. 10 ff.

[2] Cannon, Lucius H., *op. cit.* p. 120 ff.

of the fact that the National Board has already been analyzed and a further discussion would add little to the value of our work. In spite of a hot fight put up by the motion picture interests, in New York State a censorship law very similar to those in existence in other states was passed by the legislature and signed by Governor Miller.[1] Virginia in March, 1922, also adopted state censorship of motion pictures, using a type of board similar to those in the other states mentioned.

It would seem that since only six states out of the forty-eight in the United States of America have legalized censorship, and that since the legislation on the subject in these states has all been passed within the last ten or fifteen years, that censorship has not yet had a trial by which it would be fair to judge its value. This is not the case, for censorship is neither so new nor so narrowly restricted as it would seem to be at first glance, nor has it been without valuable results in the states in which it has been tried.

England has had an effective form of censorship of the theatre for almost two centuries. This was extended to motion pictures as the motion picture industry expanded, and it is indicative of the fact that it has not failed in England that the results of the investigation of the Cinema Commission of Inquiry which was instituted by the National Council of Public Morals in Great Britain showed a balance of evidence in favor of the continuation of motion picture censorship.[2] The Cinema Commission was very careful in its investigation to

[1] Laws of New York, Chapter 715, "*An act to regulate the exhibition of motion pictures, etc.,*" became a law May 14, 1921.

[2] England has had censorship of theatres of all kinds since 1727. There have been four Parliamentary investigations of censorship, in 1853, 1866, 1892 and 1909, none of which seem to have disclosed any facts justifying its abolition, for complete censorship of all theatres is still in effect. *Hearings before the Committee on Education*, House of Representatives, January 15-19, p. 157.

For a discussion of the development of motion pictures and censorship in England, see the *Times*, London, February 21, 1922, Supplement, pp. V to XVI.

gather all varieties of evidence on the different social aspects of the industry, and its report today stands as one of the most thorough of its kind. It is without doubt the best governmental investigation of the effects of motion pictures ever completed, and will probably remain such for a long time. It is regretable that nothing has been undertaken in this country that approaches it in scope or value, though the United States is the leading nation in the field of motion picture production and exhibition.

Germany had motion picture censorship before the World War, dropped it for a time, and was recently compelled to go back to censorship by the gross violations of the standards of decency by producers who were attempting to "give the public what it wanted." Japan also has a national censorship system which has not been unsuccessful.[1] Numerous other governmental units have legalized previewing of motion pictures The Lieut.-Governors-in-Council in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan have power to appoint either censors or boards of censorship with power to permit or prohibit the exhibition of any film in their respective provinces. Section 1626 of the ordinances of the Chicago City Council, as amended May 24, 1915, prohibits the circulation of any motion picture film unless a permit shall previously have been obtained from the superintendent of police of the city. Examples of this nature might be greatly multiplied, but no case could be cited where after censorship had been given a fair trial it was shown to be a failure and eliminated. It is remarkable that in spite of the sincere and expensive agitation on the

[1] "This Board" (the Japanese Board of Censorship of motion pictures) "belongs to the police department of every prefecture in Japan where one or two men can accept or reject any picture they wish. This Board is under the police department functioning under each local government. It is a part, however, of the Imperial Interior Department. It regulates, both on the administrative and judicial sides, the producer, the exhibitor, the audience and others connected with motion pictures as well as the films by inspection." The *Bulletin* of the Affiliated Committees for Better Films, Vol. IV, No. 5, May, 1920.

part of the industry to get rid of what they believe to be the curse of their business, not one censorship victory of any importance, either in the courts or in the balloting by the people, has been placed to their credit. The extent of the battle for censorship in this country may be judged by the statement made in *Wid's Year Book* for 1920 to the effect that the Censorship Committee of the National Association of the Motion Picture Industry would fight censorship in thirty-six states during the winter of 1921. This in itself is an indication of the hold which the idea of state censorship has on the people of the United States. It may be said without fear of serious contradiction that censorship has not grown more rapidly than the industry itself, and, therefore, cannot be called a mushroom growth by the industry, nor can it be said to be a failure in view of its rapid gain in popularity, unless facts are produced to show that it has seriously injured the industry without correspondingly greater benefits to the public.

Realizing, then, that censorship is not a passing phenomenon, and that state censorship is one of its most important forms, it is advisable to consider the mechanical details thereof as provided by legislative enactments. The usual number of members of state censorship boards is three, the only exception to this rule being Ohio, and even in this case there are two assistants to the chief of the Division of Film Censorship of the Department of Education. Before the Reorganization Bill of July 1, 1921, there were also three members of the Ohio board of censors. Appointment to office is by the governor of the state, with or without the consent and advice of the senate, the appointment usually being for a term of three years. Appointees are supposed to be qualified by education and experience to fulfill the duties attendant upon their office. All films must be submitted to the board for approval before being exhibited within the territory of the state. The board is given general instructions to approve films which are educational or afford harmless amusement, and is to disapprove all that are harmful, immoral, sacrilegious, indecent, or likely to stir up race or class hatred. Films may be disapproved in whole or in part for violations of

the above standards in action or in theme. Recourse may be had by the producer to the courts of the state in case it is his belief that the rejection of his film was without adequate reason. Violations of the rules and decisions of the boards of censors are punished by fines of from a few dollars on up to a few hundred. Jail sentences are also possible in a number of cases, but this amounts to little more than a possibility in actual practice. This, in bare outline, includes the important common features of the existing state censorship acts, as provided by law. It does not, however, tell the entire story.

The arguments against censorship are, as is to be expected, best stated by officials of the industry, though there are many entirely disinterested people who are opposed to censorship on principle. Their ideas, however, have been adopted by the industry and need not be discussed separately.

Possibly the first argument advanced against censorship was the one that censorship of motion pictures constitutes a violation of the inalienable principle of freedom of speech The Pennsylvania act of Assembly of June 19, 1911, creating a board of censors was promptly challenged on grounds of unconstitutionality. The final decision in this case, as in every other case based on similar grounds, was in favor of the principle of previewing censorship.

In the case of Jake Block, Nathan Wolf, et al., vs. The City of Chicago, 239 Illinois Supreme Court Reports, page 251, the legality of a city censorship was upheld by the court in an opinion which maintained the following principles:

"(1) The City has power to regulate the motion picture business;

"(2) That an ordinance passed under express powers cannot be held void or unreasonable;

"(3) That the ordinance is not invalid because the Chief of Police is to determine whether the pictures are obscene or immoral;

'(4) That the ordinance prohibiting the exhibition of immoral, or obscene pictures is not invalid because it fixes no definite or certain standard;

"(5) That a picture may be immoral, although it illustrates scenes connected with history; and

"(6) That a person is not deprived of his constitutional rights without due process of law when not permitted to show a picture that violates the provisions of the ordinance." [1]

The decision of the Illinois Supreme Court which embodies these principles in accordance with the general legal opinion throughout the United States, and the positions taken by the court, may be considered as typical of the legal views on the question raised.

Two cases were taken to the Supreme Court of the United States and decisions were handed down by that court during the October term of 1915. These were the case of the *Mutual Film Corporation vs. the Ohio Industrial Commission*, 236 U. S. Supreme Court Reports, pp. 240 to 248, and the case of the *Mutual Film Corporation vs. George H. Hodge, Governor of Kansas*, 236 U. S. Supreme Court Reports, p. 257. Both cases were argued on the same grounds, namely, that the censorship statute in question imposed an unlawful burden on interstate commerce; that it violated the principle of freedom of speech and publication; and that it attempted to delegate legislative power to censors. Mr. Justice McKenna rendered the decision, and upheld the validity of both the Ohio and the Kansas censorship act. Much of his decision in the Ohio case is included in a footnote, which follows, and in Appendix F, for the reason that he has carefully discussed the points in question, and that, although his stand was definitely against the allegations of the Mutual Film Corporation on all points of constitutionality which were raised, the opponents of censorship still continue to argue the case with statements concerning the limitation of the right of freedom of speech and of the press, and the deprivation of property without

[1] Chicago Motion Picture Commission, *Report*, September, 1920, p. 12.

due process of law.[1] Those phrases have long been recognized

[1] "Where provisions for censorship of moving pictures relate only to films intended for exhibition within the State and they are distributed to persons within the State for exhibition, there is no burden imposed on interstate commerce.

"The doctrine of original package does not extend to moving picture films transported, delivered and used as shown in the record in this case, although manufactured in, and brought from, another State.

"Moving picture films brought from another State to be rented or sold by the consignee to exhibitors, are in consumption and mingled as much as from their nature they can be with other property of the State and subject to its otherwise valid police regulation, even before the consignee delivers to the exhibitor.

"The judicial sense, supporting the common sense of this country, sustains the exercise of the police power of regulation of moving picture exhibitions.

"The exhibition of moving pictures is a business, pure and simple, originated and conducted for profit like other spectacles, and not to be regarded as part of the press of the country or as organs of public opinion within the meaning of freedom of speech and publication guaranteed by the constitution of Ohio.

"This court will not anticipate the decision of the state court as to the application of a police statute of the State to a state of facts not involved in the record of the case before it. *Quaere*, whether moving pictures exhibited in places other than places of amusement should fall within the provisions of the censorship statute of Ohio.

"While administration and legislation are distinct powers and the line that separates their exercise is not easily defined, the legislature must declare the policy of the law and fix the legal principles to control in given cases, and an administrative body may be clothed with power to ascertain facts and conditions to which such policy and principles apply.

"It is impossible to exactly specify such application in every instance, and the general terms of censorship, while furnishing no exact standard of requirements may get precision from the sense and experience of men and become certain and useful guides in reasoning and conduct. . . . .

"The moving picture censorship act of Ohio of 1915, is not in violation of the Federal Constitution or the constitution of the State of Ohio, either as depriving the owners of moving pictures of their property without due process of law or as a burden on interstate commerce, or as abridging freedom and liberty of speech and opinion, or as delegating legislative authority to administrative officers."

Mutual Film Corporation vs. Industrial Commission of Ohio, 256 United States Supreme Court Reports, p. 230.

to have excellent value as slogans, and a group of court decisions, including two by the United States Supreme Court, will not find it easy to drive them out of use.[1]

Another frequently used argument against censorship is the statement that it is unnecessary.[2] It is unnecessary, it is claimed, first, because pictures shown contain little that could be harmful to the community. The amount of harmful material they actually contain may be judged by the fact that as has been previously mentioned, no important survey of the contents of motion pictures has failed to find a considerable proportion of American motion pictures to contain socially undesirable elements. A better grounded reason for the lack of necessity for censorship is the belief that there are other more effective or less objectionable ways of accomplishing the same results.

Public opinion, for example, will in the long run undoubtedly have an effect in the process of eliminating the socially unde-

[1] The United States Supreme Court decided that compulsory previewing of motion pictures was constitutional in 1915. (See Appendix F for details of this decision.) The following quotation taken from a pamphlet issued in opposition to state censorship since that year, but does not seem to have been affected by the Supreme Court decisions.

"The Constitution of the United States and those of the several states guarantee the freedom of speech and the press. Motion pictures have arisen since the framing of the constitutions, but they are obviously a means whereby opinions are expressed, and as such they are entitled to the same right of liberty as is accorded speech and press." A *Garden of American Motion Pictures*, published by the National Board of Review of Motion Pictures, January, 1920, p. 24.

[2] The following telegram opposing the adoption of House of Representative Bill 456 is typical of much of the opposition to legalized censorship and assumes great significance when it is remembered that the motion picture mentioned in it was one which many serious and responsible citizens and officials of this country believed likely to cause race difficulties. It was for this reason that it was censored in many parts of the United States. The telegram, which is apparently intended as a serious argument against censorship in general and of one picture in particular, pays no attention whatever to the point at issue, that of public safety.

sirable. In support of this method of improving the standards of the industry is offered the admitted change which has come about in the type of pictures which are being exhibited. The wild west picture is a thing of the past, so far as the better houses are concerned, though the old-time thriller is still being shown in many of the cheaper theatres. Similarly, the "vamp" is no longer the popular favorite in screen plays that she was but a few years ago. Other examples could readily be shown of the trend away from the more crude appeals to the emotions. The leading pictures of the past year have been sensual, elaborate

"New York, N. Y.

"Hon. James E. Martine,
United States Senate, Washington, D. C.

"Censorship of motion pictures is the most dangerous attack on American liberty since the foundation of the Republic. The motion picture is a process of recording thought on yellow parchment without the use of printer's ink, and is as great an advance on printing as Guttenberg's invention was over the quill and pen. The printing press revolutionized the world by bringing knowledge within the reach of hundreds of millions. To strangle this great art in its infancy will be a crime against humanity. Free speech is the foundation of our Republic. There is no reason for censorship. The motion picture show is now cleaner than the spoken drama or the press. The police powers of the State are already ample. Any citizen can close a theatre within an hour if the laws of morality are violated. A censorship of opinion is the aim of our enemies. Our fathers fled the Old World to escape this and founded the Republic to free the human mind from shackles. Shall we go back to the dark ages? I first preached the Clansman as a sermon. No censor dared to silence my pulpit. I turned my sermon into a lecture and delivered it from Maine to California without license. I turned the lecture into a novel and no censor has yet stopped the press of Doubleday, Page & Co. I turned the novel into a spoken play, and no censor has dared to interfere. I turned the play into a motion picture, and it has cost me $75,000 in lawyers' fees to fight the local censors the first ten months. This condition of affairs is infamous. It is the immediate duty of Congress to reffirm the principle of free speech in America and abolish all censors.

(*Signed*) THOMAS DIXON."

Hearings before the Committee on Educatoin, House of Representatives, January 13-19, 1916, p. 236.

portrayals of Oriental life. A third type of picture can be seen to be gathering popularity, the picture which is based on a story of known merit, written by authors of literary ability, played by actors who have acting ability. It is not difficult to see how this change has been brought about by the censorship power of public opinion, but public opinion by itself, unsupported by some authorities who will review all plays, and not only those shown in the convenient theatres of a respectable nature, cannot reach half of the productions that are being reached by the Pennsylvania system. It is the fraction that public opinion cannot reach that needs attention.

In the third place, state censorship is said to be unnecessary because there already exist officials with all the requisite legal authority to eliminate the obscene and immoral pictures. This point has already been discussed in such a way as to show that although there seems to be little wrong with the theory involved, it has not proved satisfactory in practice.

Again, it is the claim of the National Board, for example, that parents are in duty bound to supervise the recreation of their children and to see to it that only the better type of picture is patronized. The cry that the United States is becoming too paternalistic has been raised, and the motion picture interests have seized with joy on this anti-censorship slogan, which seems to be especially powerful at the present time. The opponents of motion picture censorship forget that the same cry of paternalism was raised against compulsory education at its inception. They forget that the "let alone" policy has been abandoned after repeated and successful trials of an opposite policy by our government in cases where the public welfare was concerned. The possible anti-social effects of motion pictures are such as to justify governmental interference for the welfare of the nation, and until the facts show that clean pictures alone will be produced and exhibited without governmental regulation the laws of the nation must be "paternalistic". While it is conceivable that 99 per cent. of the industry may reach that stage when they will give the public only that which is in accord with the accepted social standards, it would be an unusual situation were the

entire trade to refrain from wrongfully capitalizing the human emotions of its patrons if free from legal supervision. We may assume that most business organizations are as interested in the public welfare as the motion picture business, yet the Federal Trade Commission is still functioning to good effect, and without too much hardship on the better groups under their supervision.

Finally, state censorship is claimed to be unnecessary for the reason that the necessary censoring could be done more efficiently by the producers themselves at the source. The most practical way of doing this which has as yet been evolved is that of voluntary co-operation with the public through the National Board of Review in New York City. As has been previously shown, mere recommendation of eliminations without power of compelling compliance is at best an ineffective weapon to use against an institution so widespread and powerful as motion pictures.

The remaining arguments against legal censorship are that it is impossible for any legally constituted body to decide what the people should and what they should not see; that censorship ruins the plays; that censorship is for the protection of children, and should not apply to all plays, since adults also have rights; that censorship officials have proved incompetent in the past, and therefore always will; and that boards of censorship are after all only allowed to exist because they furnish sinecures for the friends of the political powers that be, and are consequently a source of graft. These, with the previously mentioned arguments, seem to be the most important evidences which have been brought forth against censorship by the motion picture industry. [1]

[1] The National Board of Review in its campaign for "selection, not censorship" as the solution of motion picture problems, holds that censorship, state and federal, has been rejected for the following reasons:

"Censorship is an invasion of consitutional rights" in that it limits freedom of speech and the press; it is a "defiance of democratic principles" because it empowers a small group to decide what the people may see, and "takes away from local authorities who are elected by the people power to regulate the pictures shown in their own communities"; it is a failure because there is no hope of censors' uniform decisions, as has been shown by not uncommon disagreements between existing censors; it is undesirable because there is "no

They have been culled from a large number of articles in trade journals, from speeches before legislatures, committees of investigation, and other more general audiences by the defenders of freedom of production; and from the more formal arguments which the legal advisors of the industry have laid before the courts and voters of this country. It would be reasonable to suppose that in the case where a bill for state censorship which had passed the legislature of that state and was up for consideration by the voters at an election to decide whether or not it should go into effect, the briefs for and against the bill filed with the secretary of the commonwealth in accordance with the law would contain the very best of the evidence on the subject under contest. Such a bill is pending in Massachusetts at the present time, yet the arguments on both sides filed with the Secretary of the Commonwealth of Massachusetts are given without reference to supporting facts, and in many cases would be difficult of proof.

There is considerable basis for the statement that it is practically impossible for any legally constituted body of officials properly to decide what should and what should not be shown on the screen. Opinions will vary, especially in different parts of the country. They will even vary as between members of the same board. Examples of this are not uncommon, and are not infrequently brought forth to show the impracticability of any legal censorship. It might be mentioned that it is not altogether an uncommon occurrence for judges of the highest court in the United States to disagree, yet the court is still functioning in a valuable way. While boards of censors do have differences of

popular demand for censorship"; it is unjust because "Compared with other forms of dramatic entertainment, the motion picture is the least objectionable on the score of morals. To single it out for censorship, therefore, is on the face of it indefensibly unjust and stupid"; lastly, "censorship is no solution for the child problem," because it cannot eliminate melodrama or make the screen a "commendable entertainment for children," and in the second place, "nobody has any business to try to do this."

[1] National Board of Review of Motion Pictures, *A Garden of American Motion Pictures*, January 1920, p. 24.

opinion as to the moral value of individual scenes or pictures, it is difference not in the fundamental principles involved, but in the occasional application of standards which have been shown to be generally accepted. These differences are therefore not such as to render the boards any more useless than differences of opinion of the members of the United States Supreme Court render that court useless. They are differences of interpretation which will iron themselves out as such questions are more and more freely discussed. It must not be forgotten, however, that there is cause for dissatisfaction in so far as these differences of interpretation are due to incompetency, carelessness and wilful disregard of duty for personal reasons.

Many plays have been ruined by the slashing of the censors, with an attendant loss to the producers. Much of the slashing has been of doubtful value. It is doubtful whether the elimination of scenes in which Carmen was shown smoking was necessary in order to protect minds in the making. There are innumerable other equally ludicrous examples of narrow-minded censorship by officials who were unfitted for the positions they held. But such errors are a small part of the work done, and are outweighed by other better advised acts.[1] In the report of the Pennsylvania Board of Censors for the year ending November 30, 1918,

[1] Titles of motion picture plays, like titles of books and legitimate drama, are not always truly representative of the contents, but there is in most cases a correlation between name and subject matter. Some indication of the kind of picture the Pennsylvania censors eliminate may therefore be gained from the following titles of subjects disapproved by them. This list is taken at random from a complete enumeration of disapproved subjects, and is typical of the entire list.

"The Toreadors," "Traffic in Souls," "Traffickers on Soles," "Trapped in the Great Metropolis," "The Triumph of Venus," "Trooper 44," "True Love, or the Mighty Prince," "The Truth about Twilight Sleep," "Twilight," "Twilight Sleep," "The Unborn," "Unfaithful," "The Unpardonable Sin," "Up from the depths."

The list of which these titles formed a part was one of over three hundred similar titles of disapproved subjects, and they are in no way exceptional.

List of Disapproved Subjects, Pennsylvania State Board of Censors, 1921.

thirteen appeals are listed as having been taken from decisions by the board to the courts of the state. In none of these cases was the judgment of the board reversed. These appeals cover the period from August 1915 until June 1918, or almost three years, yet in that time, in spite of the constant efforts to show the inefficiency of censorship, the courts did not once consider the board to have been in error, according to the report of the Pennsylvania Board of Censors. Immediately upon the taking of office by the New York board, a storm of protest against its decisions was raised by the industry. Thus far no decision of the New York board has been reversed by the New York Courts. Had there been any grave cause for complaint it is not unreasonable to assume that the courts would have recognized it in their decisions.

The chairman of the Kansas board of censors receives an annual salary of eighteen hundred dollars; the other members receive fifteen hundred dollars. The Pennsylvania Act of 1915 provides that the chairman shall receive three thousand dollars, the vice-chairman, two thousand, five hundred dollars, and the secretary, two thousand, four hundred dollars. Under the Ohio act of 1915 each member of the board received fifteen hundred dollars. The pay in Maryland was fixed by the legislature at twenty-four hundred dollars. These are in sharp contrast to the recent New York statute, which fixes the remumeration of each commissioner at seven thousand, five hundred dollars. These figures furnish an explanation of some of the things that have happened in the various states. In the first four states named above it has been impossible to get men of first-class calibre to take the office of censor unless, as has notably been the case in two or three instances, some person of ability happened to be willing to sacrifice money and time in order to be able to be of service. In New York State, where the salaries were adequate it turned out that the three censorship offices were much too valuable as political plums to waste on people who were not politically valuable to the appointing power, and the consequent appointment of three people not entirely unknown politically to a position needing men and women of "training and

education fitting them for the duties of the office" was not unexpected, though in fairness it must be added that the New York Board has done well in the brief time it has been functioning.

The claim that the cost of censorship is too great a burden is hardly worthy of consideration. Censorship boards belong to that increasing group of state departments which are self-supporting in that they need no appropriations from the state treasury for their support. Fees of from one to three dollars for the approval of each reel of 1,000 feet of film, together with fines for violations of censorship regulations, have been found to be sufficient for the payment of the salaries and incidental expenses connected with the carrying out of censoring duties. In view of the large salaries paid to stars, the large rentals charged for films, and the general prosperity of the industry, it would be difficult to show that even much greater charges would materially affect its welfare.[1] Most of the protests against censorship are founded on assumptions or facts which are so weak that the conclusions drawn from them are of little value, and the claim that censorship costs are in excess of the resultant value is possibly the worst founded of all.

[1] The general arguments against censorship are so well known that they require only brief comment here. More detailed information may be obtained from the following sources:

Chicago Motion Picture Commission, *Report of*, September, 1920.

New York State Conference of Mayors, *Report of the Special Committee on Motion Pictures*, Albany, N. Y., February 24, 1920.

General Federation of Women's Clubs, *General Federation Magazine*, Vol. XVIII, No. 1, January, 1919, pp. 13 to 26 incl.

House of Representatives, *Hearing before the Committee on Education on H. R. 456*, January 13-19, 1916.

National Board of Review of Motion Pictures, *Objections to State Censorship of Motion Pictures*, January, 1920; *The Case Against Federal Censorship of Motion Pictures*, and other pamphlet and mimeographed material on the subject which may be obtained from the National Board apparently without limit.

IX

Summary

It is unessential that any evidence be advanced to show that the type of picture seen by motion picture audiences consisting of millions of people of all ages and conditions influences their thoughts and their subsequent activities. The belief that man's conduct is the invariable result of the interaction of environment and heredity is too widely accepted today to require any additional substantiating material. We may consider the principle an established fact and make use of it as such by assuming without a mass of detailed facts as proof that what is shown on the motion picture screen will have a character-molding influence of those who see it.

An analysis of standards of human conduct has been made in an effort to discover a measure whereby to judge the type of picture which is being shown in American motion picture theatres. It was found that there existed a remarkable unanimity of opinion among all interested groups, including the most vigorous opponents of government censorship, concerning conduct believed to be harmful to society. The origin and function of moral codes both lie in group survival, and the forbidden acts are determined by group opinion to be those which are believed, correctly or otherwise, to be detrimental to its existence. If any civilized society is agreed on certain activities as being worthy of its tabu it is of doubtful importance in a study of social legislation to inquire into their actual survival value. In the case under consideration practical agreement has been found to exist among those concerned, and it is only necessary for our purposes to see to what extent, if at all, the accepted standards are being violated in motion picture plays.

From a comparison of the results of numerous independent investigations of motion pictures within recent years no other conclusion can be reached than that many violations of the acknowledged desirable social standards are continually being

shown on the screen in most communities without any penalty, legal or social, being inflicted on those responsible for their exhibition. An estimate placing the number of pictures tending to have a harmful effect on motion picture patrons at 20 per cent. does not seem to be too high in the light of the evidence offered by the only reliable social studies available. It is these pictures which necessitate some form of control.[1]

We must not, however, fall into two common errors, errors of extremist reformers who have neglected, possibly willfully, to establish scientific foundations for their recommendations. It seems to be frequently assumed that motion picture producers, exhibitors and actors are different from the rest of us, that they are largely moral degenerates who would take joy in perverting the screen by sordid pictures even though there were no financial gain involved. The newspaper gossip of drunkenness, murders and gay life among the members of the industry is pointed out as evidence of this moral perversion, and sermons have been preached, legislation has been proposed, not against the few under suspicion but against the entire industry. Such reasoning is of course entirely fallacious and barely worth mentioning, for only a small, though annoying following can be acquired and held through the spreading of such unfounded general slander. That the motion picture people, business men, directors and actors, are neither better nor worse than the rest of the population must be acknowledged by anyone who has come into any considerable contact with them, and would not need space here were it not for the ever present fanatic. To call attention to this error is sufficient to dispose of it.

The second common error of reformers is the basing of decisions concerning the influence of motion pictures on insufficient or

[1] The National Board of Motion Pictures Review is probably one of the most conservative bodies which pass on motion pictures with regard to the number of eliminations requested. A few samples of their eliminations, selected at random, indicative of what may be shown in 42 states of the Union without legal penalty, are quoted in Appendix E.

unscientific evidence.[1] To go to motion picture theatres a few times and then absolve or condemn all productions sounds foolish, yet too often that is exactly what is done. Considering the present size of the industry which is releasing for distribution to exhibitors over fifteen feature pictures and any number of shorter subjects every week it is evident that no one man is qualified to pass judgment unless he has devoted more time than the ordinary critic to the study of the situation. He must rely on what has been found by such investigations as have been mentioned in a previous chapter. It is to be regretted that they are as few and as inaccessible as they are. These investigations while they have their faults are a relatively safe indication of the trend in motion pictures if they are properly weighted with reference to the undesirable peculiarities which every report has in the way of personal, religious or sectional bias, unwise sampling, and the like. The records of the eliminations of legal boards of censorship are also available in many cases and furnish good indication of the undesirable features in motion pictures in the sections which do not have censorship, since the same pictures are shown in all parts of the country with comparatively

[1] An example of the type of investigation the value of which is considerably lowered by the use of too many untrained, unco-ordinated apparently randomly selected investigators whose judgments were based on vague and possibly unfortunate standards of conduct, is that made in Portland, Oregon, in 1914, the results of which were published in the Reed College *Record*, No. 16, September, 1914.

An equally unsatisfactory investigation made by means of the questionnaire method by one of the leading producers of the country has just been completed. The questionnaire was sent broadcast to all parts of the world where American pictures are shown. It is a well-known fact that people engaged in literary work are overwhelmingly opposed to censorship yet it seems that an impartial answer to the question "Do picturegoers make a more efficient censorship authority than a politically controlled committee?" was asked. It is to be wondered what particular qualification newspaper editors have for answering the question "What has been the influence of the motion picture on home and community life during the past ten years?" See, *Moving Picture World*, Vol. LV, No. 5, April 1, 1922.

little elimination save by censors. Inaccurate observations and unjustified interpretations are important causes of avoidable difficulties between the factions interested, and with many sources of information available as there are to those who are willing to hunt, such errors are inexcusable.

Granting that mistakes by reformers and others have been numerous, it must nevertheless be admitted that all is not as it should be and that some means of eliminating a relatively infrequent though important type of picture should be put into effect throughout the country. One of the most glibly offered suggestions is that education is the only sound solution to the problem. Parents, for example, must be educated so that they will be the censors for their children. It is not the function, say the adherents to this policy, of the state to usurp the offices of parents, but only to train them so that they may perform their natural duties in the best possible way. This assumes that censorship is for children only and that the present difficulties are not of such importance as to require any immediate action, neither of which assumptions has been shown to be accurate. It is education, say these same people, that must raise the standards to such a high moral plane that the motion picture industry will be compelled to produce only clean pictures on account of the general boycotting which all others will receive. Some of the difficulties with this program are that this again overlooks the immediate problems, that the pictures are themselves a part of our educational system and to some extent afford exactly the wrong type of education, and that human ingenuity has never succeeded is entirely eliminating the morally "submerged tenth" from any fair-sized civilization. Until these objections are overcome education can only be a part, though a not unimportant part, in any well rounded program for the social regulation of motion pictures.

The church has also been suggested as the agency by means of which the undesirable motion pictures may be removed from our

theatres.[1] The objections which apply to education as the sole means of purification also apply to the use of this institution without the support of some other agency for the handling of the stubborn minority which cannot be reached through moral exhortation.

Another group of people who might be described as adherents to the theory of natural law believe that if left to herself nature will work out her own salvation. Public opinion, it is said, will eventually force undesirable pictures out of the market without any teleological interference by reformers. A time will come when if the pictures of today are detrimental to the social group they will by the very nature of things be driven out without any prohibitory legislation. While there is an appreciable element of truth in this belief, its adherents forget that it is largely through the efforts of objectors to things as they are that they are changed to an approximation of what they should be. It is also forgotten, as it is by every other opponent to legal control of motion pictures, that as we have already mentioned several times, we cannot hope to have all people govern their activities in accordance with the needs of social welfare without some means of compelling the small fringe of outlaws to become law abiding. We have general agreement in the general principle of the sanctity of human life but policemen are needed to keep down the number of violations of the principle by the few who

[1] The publications of the National Board of Review continually stress the strength of motion pictures in the fields of education, religion and general training. For example, see the *Bulletin* of the Affiliated Committees for Better Films, Vol. IV, No. 8, September 1920; Vol. II, No. 9, October, 1918; Vol. V, No. 7, July, 1921; Vol. II, No. 7, July, 1918.

The manner in which the Women's Alliance has attempted to handle the motion picture problem, and it has met with considerable success, through the formation of committees of representatives of churches, schools, clubs and others, including the managers of theatres included in the district of each committee, and through co-operation with the National Board of Review, is outlined in the Social Hygiene *Bulletin*, Vol. VIII, No. 6, June 1921. A summary of this is included in the *Journal of Criminal Law and Criminology*, Vol. XII, No. 2, August 1921.

for some reason are not willing to conform. We cannot hope that a policy of non-interference will work out satisfactorily any more than will a purely educationsl policy, or a chucrh guardianship of morals policy, no matter how desirable in the abstract any one of these policies would be. They are necessary as a part of a constructive program, but with motion pictures and human personality as they are today some negative program is also required.

The National Board of Review of Motion pictures as a negative and a positive agency has also been discussed, as have some of the most important variations of legal control. It has been found that the National Board has not been successful and cannot succeed in the purpose for which it was created. The very change in its emphasis from censorship to review to selection is evidence that it has fallen down in its attempt to deal with the situation. While it can be a great positive influence in the industry through its selective program, it is evident that what is needed for it to be considered the only necessary agency of control is some power to compel obedience. The state alone has that power.

It would seem desirable at first glance to have uniform control of motion pictures through the federal government throughout the entire United States. However at the present time this would be inadvisable due to the differences of public opinion on the principle of censorship and to the lack of existing and proposed feasible means for recognizing that pictures which are passable in so far as one section of the country is concerned may result in racial trouble, labor difficulties or other mob violence when shown in another section. Federal censorship legislation, or uniform state legislation, is the goal towards which the efforts of those who have the welfare of the nation at heart should strive, but until some means of centralization of authority and localization of administration is devised a federal censorship act would be unfortunate.

Meanwhile, the local units of government must be relied upon to protect the community against the outlaw picture. There are in all states and cities officials who have the authority

to prohibit the showing of lewd and immoral pictures, but due to pressure of other duties or disinclination to interfere in a field where regulation has always stirred up such violent reactions from powerful sources, these local officials have not acted when they were not compelled to do so. Whatever the cause, existing public officials, chosen without specific reference to motion picture regulation, have not been successful in handling the motion picture problem as a side line to their other work. When members of the police force, for example, have been specially assigned to the regulation of motion pictures, a considerable degree of success has been achieved, as in Chicago, but separate state censorship boards, not so readily accessible to all theforces which all too frequently interfere with our municipal protective officials, have achieved better results, not only because they are less subject to external pressure but also because the state is a much better administrative unit from the point of view of the industry and of the censor than the city. Some degree of unity is required, and since we have shown the United States to be too large to be included under one system under present conditions, and since there are too many cities of varying social and political colors for any great agreement of action to exist if each were to have a separate board of censorship, the state is the logical choice as the present regulative unit.

The contentions that censorship is unconstitutional, that it violates the American principle of freedom of speech and of the press, that it is unjust discrimination in view of the fact that theatres are not similarly censored, that it is expensive to the taxpayer and to the industry beyond its value to the nation, that it cannot be put into effect on account of the lack of standards whereby to judge, and that it has failed where tried, cannot be said to be supported by the facts in the case. The records of the four state boards which have been functioning for a number of years if studied contain sufficient material to overthrow these arguments. Not all of the evidence on all of these points has been included in this treatise. Space would not permit. Much more, however, has been considered than has been cited, and there has been a conscientious attempt to present a fair view of

the field. The evidence has been carefully weighed, and the opponents of legal censorship have been given the benefit of every doubt. The only possible conclusion is that legal censorship is justified by conditions in the motion picture industry which have been unavoidable, and that for many years to come the most desirable form of censorship will be that which is under direct state control.

APPENDIXES

Appendix A

By a compilation made by the Morosco interests, and printed in the Philadelphia *Evening Ledger*, September 9, 1921, the number of motion picture theatres in the country was found to be 17,824, distributed by cities and states as follows:

In Twenty-nine Chief Cities

Greater New York	604	Portland, Ore	51
Chicago	345	Newark, N. J.	51
Philadelphia	194	Syracuse	51
Detroit	168	Kansas City	49
Cleveland	157	Washington	48
Pittsburgh	121	New Orleans	48
Los Angeles	102	Columbus, O	45
St. Louis	100	Seattle	45
Baltimore	96	Oakland	44
Buffalo	89	Cincinnati	42
San Francisco	86	St. Paul	42
Minneapolis	75	Rochester	42
Milwaukee	66	Denver	40
Indianapolis	61	Omaha	35
Boston	60		

In the States

Alabama	196	Georgia	219
Arizona	93	Idaho	158
Arkansas	239	Illinois	1027
California	676	Indiana	602
Colorado	260	Iowa	359
Connecticut	122	Kansas	429
Delaware	35	Kentucky	252
Florida	158	Louisiana	241

Maine	255	Ohio	1095
Maryland	177	Oklahoma	343
Massachusetts	558	Oregon	249
Michigan	459	Pennsylvania	1533
Minnesota	618	Rhode Island	49
Mississippi	118	South Carolina	119
Missouri	681	South Dakota	246
Montana	161	Tennessee	198
Nebraska	481	Texas	839
Nevada	30	Utah	157
New Hampshire	132	Vermont	53
New Jersey	370	Virginia	396
New Mexico	84	Washington	343
New York	1695	West Virginia	191
North Carolina	203	Wisconsin	498
North Dakota	315	Wyoming	67

Appendix B

Comparative imports of Motion-Picture Film into the United States from all Countries and from Five European Countries (England, France, Italy, Germany, and the United Kingdom), for Fiscal Years Ending June 30, 1911 to 1918, and Calendar Years 1918 to 1921.

	UNEXPOSED	
YEARS	ALL COUNTRIES LINEAR FEET	SELECTED COUNTRIES LINEAR FEET
1911	(a)	(a)
1912	(a)	(a)
1913	(a)	(a)
1914	44,717,000	44,243,000
1915	61,402,000	61,401,000
1916	58,491,000	58,488,000
1917	52,294,000	52,292,000
1918	47,463,000	47,368,000
1919	25,709,000	25,614,000
1919	13,747,000	13,502,000
1920	99,829,000	99,716,000
1921b	122,975,000	120,551,000

YEARS	EXPOSED — ALL COUNTRIES LINEAR FEET	EXPOSED — SELECTED COUNTRIES LINEAR FEET
1911	11,725,000	10,422,000
1912	14,275,000	12,710,000
1913	15,674,000	13,880,000
1914	20,057,000	18,106,000
1915	10,789,000	9,150,000
1916	7,507,000	6,520,000
1917	5,835,000	3,738,000
1918	4,088,000	3,191,000
1919	2,268,000	1,670,000
1919	2,920,000	2,002,000
1920	6,233,000	4,385,000
1921b	7,375,000	5,601,000

YEARS	TOTAL — ALL COUNTRIES LINEAR FEET	TOTAL — SELECTED COUNTRIES LINEAR FEET
1911	11,725,000	10,422,000
1912	14,275,000	12,710,000
1913	15,674,000	13,880,000
1914	64,774,000	62,349,000
1915	72,192,000	70,551,000
1916	65,998,000	65,008,000
1917	58,130,000	56,029,000
1918	51,551,000	50,559,000
1919	27,977,000	27,314,000
1919	16,667,000	15,505,000
1920	106,062,000	104,091,000
1921b	130,349,000	126,152,000

a—Figures prior to 1914 are not available.
b—Nine months ending Sept. 30.

Imports of Motion-Picture Film into the United States for Fiscal Years Ending June 30, 1911 to 1918, and for Calendar Years 1918 to 1921.

EXPOSED

YEARS	LINEAR FEET	VALUE
1911	11,725,000	$685,000
1912	14,275,000	1,004,000
1913	15,674,000	1,331,000
1914	20,057,000	1,412,000
1915	10,789,000	671,000
1916	7,507,000	482,000
1917	5,835,000	675,000
1918	4,088,000	343,000
1919	2,268,000	293,000
1919	2,920,000	500,000
1920	6,233,000	933,000
1921b	7,375,000	1,060,000

UNEXPOSED

YEARS	LINEAR FEET	VALUE
1911	(a)	(a)
1912	(a)	(a)
1913	(a)	(a)
1914	44,717,000	$890,000
1915	61,402,000	968,000
1916	58,491,000	750,000
1917	52,294,000	802,000
1918	47,463,000	739,000
1919	25,709,000	420,000
1919	13,747,000	283,000
1920	99,829,000	1,698,000
1921b	122,975,000	2,338,000

TOTAL

YEARS	LINEAR FEET	VALUE
1911	11,725,000	$685,000
1912	14,275,000	1,004,000
1913	15,674,000	1,331,000
1914	64,774,000	2,302,000
1915	72,192,000	1,639,000
1916	65,998,000	1,232,000
1917	58,130,000	1,478,000
1918	51,551,000	1,082,000

1919.....	27,977,000	713,000
1919.....	16,667,000	783,000
1920.....	106,062,000	2,631,000
1921b.....	130,349,000	3,397,000

a—Figures not available prior to 1914.
b—Nine months ending Sept. 30.

United States Exports of Motion-Picture Film for Fiscal Years Ending June 30, 1913 to 1918, and Calendar Years 1918 to 1921.

YEARS	EXPOSED LINEAR FEET	UNEXPOSED LINEAR FEET	TOTAL LINEAR FEET
1913.....	32,192,000	80,035,000	112,227,000
1914.....	32,690,000	155,360,000	192,050,000
1915.....	35,987,000	115,067,000	150,054,000
1916.....	158,752,000	72,299,000	231,051,000
1917.....	128,550,000	49,486,000	178,036,000
1918.....	84,547,000	57,995,000	142,542,000
1918.....	79,888,000	71,549,000	151,437,000
1919.....	153,237,000	120,042,000	273,279,000
1920.....	175,233,000	62,915,000	238,148,000
1921.....	111,585,000	31,015,000	142,600,000

a—Nine months ending Sept. 30.

U. S. Department of Commerce, *Commerce Reports*, January 2, 1922, p. 34 ff.

Appendix C

English Censorship Rules

Pictures containing the following are condemned:

(1) Materialization of the conventional figure of Christ.
(2) Unauthorized use of Royal names, public characters, and well-known members of society.
(3) Inflammatory political sub-titles.
(4) Indecorous and inexpedient titles and sub-titles.
(5) Sub-titles in the nature of swearing.
(6) Cruelty to animals, including cock-fights.

(7) Irreverent treatment of religious observances and beliefs.
(8) Making young girls drunk.
(9) Excessive drunkenness.
(10) Brutality and torture to women.
(11) Subjects in which crime is the dominant feature.
(12) Commitment of crime by children.
(13) Criminal poisoning by dissemination of germs.
(14) The practice of the third degree in the United States.
(15) Cumulative effect of crime.
(16) Murders with realistic and gruesome details.
(17) Executions and crucifixions.
(18) Cruelty to children.
(19) Excessive cruelty and torture to adults.
(20) Fights showing extreme brutality and gruesome details.
(21) Gruesome incidents.
(22) Actual scenes of branding men and animals.
(23) Women fighting with knives.
(24) Doubtful characters exalted to heroes.
(25) Nude figures.
(26) Offensive vulgarity and indecent gestures.
(27) Improper exhibition of feminine underclothing.
(28) Impropriety in dress.
(29) Indecorous dancing.
(30) Reference to controversial or international politics.
(31) Scenes calculated to inflame racial hatred.
(32) Incidents having a tendency to disparage friendly relations with our Allies.
(33) Scenes dealing with India and other Dependencies by which the religious beliefs and racial susceptibilities of their people may be wounded.
(34) Antagonistic relations of Capital and Labour and scenes showing conflict between the protagonists.
(35) Scenes tending to disparage public characters and public institutions.
(36) Disparagement of the institution of marriage.
(37) Misrepresentation of police methods.
(38) Holding up the King's uniform to contempt or ridicule.

(39) Scenes in which British officers are seen in a discreditable light in their relations with Eastern peoples.
(40) Prolonged and harrowing details in deathbed scenes.
(41) Medical operations.
(42) Excessive revolver shooting.
(43) Advocacy of the doctrine of free love.
(44) Seduction of girls and attempts thereat treated without due restraint.
(45) Attempted criminal assaults on women.
(46) Scenes indicating that a criminal assault on a woman has just been perpetrated.
(47) Salacious wit.
(48) "First night" scenes.
(49) Scenes dealing with, or suggestive of, immorality.
(50) Indelicate sexual situations.
(51) Holding up the sacrifice of a woman's virtue as laudable.
(52) Infidelity on the part of husband justifying adultery on the part of wife.
(53) Bedroom and bathroom scenes of an equivocal character.
(54) Prostitution and procuration.
(55) Effect of venereal disease, inherited or acquired.
(56) Confinements and puerperal pains.
(57) Illegal operations.
(58) Deliberate adoption of a life of immorality, justifiable or extenuated.
(59) Disorderly houses.
(60) Women promiscuously taking up men.
(61) Dead bodies.
(62) "Clutching hands."
(63) Subjects in which sympathy is enlisted for the criminals.
(64) Animals gnawing men and children.
(65) Realistic scenes of epilepsy.
(66) Trial scenes of important personages that are sub judice.
(67) Suggestion of incest.

—*The Times*, London, Supplement, February 21, 1922, p. x.

Appendix D

Standards of the Pennsylvania Board of Censors

(1) The Board will condemn pictures, and parts of pictures, dealing with "white slavery". The procuration and prostitution in all forms, of girls, and their confinement for immoral purposes may not be shown upon the screen, and will be disapproved. Views of prostitutes and houses of ill-fame will be disapproved.

(2) Pictures, and parts of pictures, which deal with the seduction of women, particularly the betrayal of young girls, and assaults upon women, with immoral intent, will be disapproved.

(3) Pre-natal and childbed scenes, and subtitles describing them, will be disapproved.

(4) Pictures, and parts of pictures, dealing with the drug habit; e. g., t e use of opium, morphine, cocaine, etc., will be disapproved. The traffic in habit-forming drugs is forbidden and visualized scenes of their use will be disapproved.

(5) Scenes showing the modus operandi of criminals which are suggestive and incite to evil action, such as murder, poisoning, house-breaking, safe-robbery, pocket-picking, the lighting and throwing of bombs, the use of ether, chloroform, etc., to render men and women unconscious, binding and gagging, will be disapproved.

(6) Gruesome and unduly distressing scenes will be disapproved. These include shooting, stabbing, profuse bleeding, prolonged views of men dying and of corpses, lashing and whipping, and other torture scenes, hangings, lynchings, electrocutions, surgical operations, and views of persons in delirium or insane.

(7) Studio and other scenes, in which the human form is shown in the nude or the body is unduly exposed, will be disapproved.

(8) Pictures, and parts of pictures, dealing with abortion and malpractice, will be disapproved. These will include themse and incidents having to do with eugenics, "birth control", "race suicide" and similar subjects.

(9) Stories, or scenes holding up to ridicule and reproach races, classes, or other social groups, as well as the irreverent and sacrilegious treatment of religious bodies or other things held to be sacred will be disapproved. The materialization of the figure of Christ may be disapproved.

(10) Pictures which deal with counterfeiting, will be disapproved.

(11) Scenes showing men and women living together without marriage, and in adultery, will be disapproved. Discussion of the question of the consummation of marriage, in pictures, will be disapproved.

(12) The brutal treatment of children and of animals may lead to the disapproval of the theme, or of incidents in film stories.

(13) The use of profane and objectionable language in subtitles, will be disapproved.

(14) Objectionable titles, as well as subtitles of pictures, will be disapproved.

(15) Views of incendiarism, burning, wrecking and the destruction of property, which may put like action into the minds of those of evil instincts, or may degrade the morals of the young, will be disapproved.

(16) Gross and offensive drunkenness, especially if women have a part in the scenes, will be disapproved.

(17) Pictures which deal at length with gun play, and the use of knives, and are set in the underworld, will be disapproved. When the whole theme is crime, unrelieved by other scenes, the film will be disapproved. Prolonged fighting scenes will be shortened, and brutal fights will be wholly disapproved.

(18) Vulgarities of a gross kind, such as often appear in slapstick and other screen comedies, will be disapproved. Comedy which burlesques morgues, funerals, hospitals, insane asylums, the lying-in of women and houses of ill-fame, will be disapproved.

(19) Sensual kissing and love-making scenes, men and women in bed together and indelicate sexual situations, whether in comedies or pictures of other classes will be disapproved. Bathing scenes, which pass the limits of propriety, lewd and immodest

dancing, the needless exhibition of women in their night-dresses or underclothing, will be disapproved.

(20) Views of women smoking will not be disapproved as such, but when women are shown in suggestive positions or their manner of smoking is suggestive or degrading, such scenes will be disapproved.

(21) Pictures or parts of pictures which deal with venereal disease, of any kind, will be disapproved.

(22) That the theme or story of a picture is adapted from a publication, whether classical or not; or that portions of a picture follow paintings or other illustrations, is not a sufficient reason for the approval of a picture or portions of a picture.

(23) Themes or incidents in picture stories, which are designed to inflame the mind to improper adventures, or to establish false standards of conduct, coming under the foregoing classes, or of other kinds, will be disapproved. Pictures will be judged as a whole, with a view to their final total effect; those portraying evil in any form which may be easily remembered or emulated, will be disapproved.

(24) Banners, posters or other advertising matter, concerning motion pictures, must follow the rules laid down for the pictures themselves. That which may not be used upon the screen, must not be used to announce and direct public attention to the picture, in the lobby, on the street, or in any other form.

Pennsylvania State Board of Censors, *Rules and Standards*, Harrisburg, Pa., 1918, p. 15 ff.

Appendix E

Samples of Eliminations by the National Board of Review of Motion Pictures

Film 1—"In the action where ~~Leslie~~ Marie is honeymooning in Italy, where she and —— are performing their toilet in the morning and —— sees the woman in the bath, (1) cut this view of the woman where the maid takes the robe off her and she steps down in the pool, thus eliminating those scenes where she appears nude.

In the scene of the orgy, to which the roue takes ——, (2) cut the close view of the dancer on the table at the point before her draperies are entirely unwound, so as to eliminate that part of the shot where her body appears plainly through the transparency of her skirt. (3) Eliminate the second view of the colored attendant where he sees the silhouette of the dancer on the wall, and makes gestures at it. (4) Cut to flashes the close-ups of the dancer lying on the table where she makes a seductive play for ——, eliminating that close-up of the dancer, photographed full on, where she is lying on the table so that her breasts appear. (5) Cut the last view of the dancer, where she makes a play for ——'s roue friend, at the point before he fondles and kisses her.

Film 2—"*Reel 1:* (1) In the scene where —— enters the water, cut to the point where she is already waist-deep, thus eliminating that part where she enters and stands in the nude. *Reel 6:* In the scene where —— dances in ——'s house: (1) Eliminate the first view of the men at the table watching her dance (except a flash to be taken from the end of this scene, and which is to be cut to avoid a jump and to preserve continuity between the scene where the sculptor rises from the table to go to the dancer's assistance and the scene where he carries her out—in other words, just preceding the scene indicated by cut No. 5). (2) Cut the scene (long shot) where the ribbons are entirely unwound from the dancer at the point where they are unwinding just above the knees. (3) Cut the close-up of the dancer's legs with the ribbons falling about them so as to use only the middle part which gives the idea of the ribbons falling but does not show at length the girl's bare legs. (4) Eliminate entirely the scene of the men jesting and holding out their glasses as the dancer becomes uncovered. (5) In the scene where the sculptor lifts the dancer in his arms to carry her out, cut the head of the scene so that it begins with the dancer already lifted in his arms and already in the state of being carried well toward the door. (6) Shorten at the tail the scene where the sculptor carries the dancer into the hall, so as to leave the action of her kicking in his arms as short as possible—in other words, to where the butler

in the background starts off to get a cloak. (Split the long shot of the guests crowding about the doorway of the dining rooms, so as to use part of it to cut in to avoid a jump and give continuity.) (7) In the scene in the hall where the butler brings the cloak, cut it up to the point where the butler is about to put the cloak over her. (8) Eliminate entirely the scene (long shot) in the hall where the dancer is seen standing, and comes toward the sculptor. (9) Cut the following close-up to the point after she kisses him where she stands looking at him in a troubled way, thus eliminating the action where she kisses him in abandon. (10) Where the butler brings her into the——boudoir cut at the point where he places her on the couch. (This scene, as cut, is to be cut back into the scene where the sculptor is sitting in the park outside.) (11) In the action where the butler is leaving the boudoir, cut the close-up of the dancer on the couch where she beckons him to come to her.

Film 3—"(1) In Reel 1: Cut the first scene of the girl in the bathtub at the point where she gets into the tub with the maid holding a cloak in front of her. (2) Eliminate the enlarged view of the girl in the bathtub where she is soaping herself. (3) Cut the view of the man looking through the key-hole to one flash. (4) Eliminate the subtitle, 'Hot Dogs'. (5) Eliminate the subtitle to the effect that a cake of soap does not have such a hard life after all. (6) Later in the picture where —— is preparing for her wedding, eliminate the subtitle, '—— bares her trousseau and other things.' (7) Eliminate the scene immediately following this subtitle against the black drop where —— is posing in negligee, opening this sequence with the scene where she has her maids around her. (8) Eliminate the close view of ——in her negligee where the camera is tilted from her feet to her head. (9) In the last reel eliminate the subtitle, '—— brings her little Boalt to his little Knutt in time to couple them.'

Film 4—"In part 2 of episode 11: Eliminate close-ups of the torturing of the —— so that there will not be more than two close-ups of girl's face, two of detective's face and one showing forcing back of girl's thumb."

From mimeographed material issued by the National Board of Review.

Appendix F

Mutual Film Corporation vs. Industrial Commission of Ohio, 236 U. S. Supreme Court Records, pp. 239–247

"Complainant directs its argument to three propositions: (1) The statute in controversy imposes an unlawful burden on interstate commerce; (2) it violates the freedom of speech and publication guaranteed by Section 11, art. 1, of the constitution of the State of Ohio; and (3) it attempts to delegate legislative power to censors and to other boards to determine whether the statute offends in the particulars designated.

"It is necessary to consider only Sections 3, 4 and 5" (of the Ohio Censorship Act).

"Section 3 makes it the duty of the board to examine and censor motion picture films to be publicly exhibited and displayed in the State of Ohio. The films are required to be exhibited to the board before they are delivered to the exhibitor for exhibition, for which a fee is charged.

"Section 4. "Only such films as are in the judgment and discretion of the board of censors of a moral, educational or amusing and harmless character shall be passed and approved by such board." The films are required to be stamped or designated in a proper manner.

"Section 5. The board may work in conjunction with censor boards of other States as a censor congress, and the action of such congress in approving or rejecting films shall be considered as the action of the state board, and all the films passed, approved, stamped and numbered by such congress, when the fees therefor are paid shall be considered approved by the board.

"By Section 7 a penalty is imposed for such exhibition of films without the approval of the board, and by Section 8 any person dissatisfied with the order of the board is given the same rights and remedies for hearing and reviewing, amendment or vacation of the order" as is provided in the case of persons dissatisfied with the orders of the industrial commission.

"The censorship, therefore, is only of films intended for exhibition in Ohio, and we can immediately put to one side the contention that it imposes a burden on interstate commerce. It is true that according to the allegations of the bill some of the films of complainant are shipped from Detroit, Michigan, but they are distributed to exhibitors, renters and lessors in Ohio, for exhibition in Ohio, and this determines the application of the statute. In other words, it is only films which are 'to be publicly exhibited and displayed in the State of Ohio' which are required to be examined and censored. It would be straining the doctrine of original packages to say the films retain that form and composition even when unrolling and exhibiting to audiences, or being ready for renting for the purpose of exhibition within the State, could not be disclosed to the state officers. If this be so, whatever the power of the State to prevent the exhibition of films not approved—and for the purpose of this contention we must assume the power is otherwise plenary—films brought from another state, and only because so brought, would be exempt from the power, and films made in the State would be subject to it. There must be some time when the films are subject to the law of the State, and necessarily when they are in the hands of the exchanges ready to be rented to exhibitors or have passed to the latter, they are in consumption, and mingled as much as from their nature they can be with other property of the State.

"It is true that the statute requires them to be submitted to the Board before they are delivered to the exhibitor, but we have seen that the films are shipped to 'exchanges' and by them rented to exhibitors, and the 'exchanges' are described as 'nothing more or less than circulating libraries or clearing houses.' And one film 'serves in many theatres from day to day until it is worn out.'

"The next contention is that the statute violates the freedom of speech and publication guaranteed by the Ohio constitution. In its discussion counsel have gone into a very elaborate description of moving picture exhibitions and their many useful purposes as graphic expressions of opinions and sentiments, as exponents

of policies, as teachers of science and history, as useful, interesting, amusing, educational and moral. And a list of the 'campaigns', as counsel call them, which may be carried on is given. We may concede the praise. It is not questioned by the Ohio statute and under its comprehensive description 'campaigns' of an infinite variety may be conducted. Films of a 'moral, educational or amusing and harmless character shall be passed and approved' are the words of the statute. No exhibition, therefore, or 'campaign' of complainant will be prevented if its pictures have those qualities. Therefore, however missionary of opinion films are or may become, however educational or entertaining, there is no impediment to their value or effect in the Ohio statute. But they may be used for evil, and against that possibility the statute was enacted. Their power of amusement, and, it may be, education, the audiences they assemble, not of women alone nor of men alone, but together, not of adults only, but of children, make them the more insidious in corruption by a pretense of worthy purpose or if they should degenerate from worthy purpose. Indeed, we may go beyond that possibility. They take their attraction from the general interest, eager and wholesome, it may be in their subjects, but a prurient interest may be excited and appealed to. Besides, there are some things which should not have pictorial representation in public places and to all audiences. And not only the State of Ohio but other States have considered it to be in the interest of the public morals and welfare to supervise moving picture exhibitions. We would have to shut our eyes to the facts of the world to regard the precaution unreasonable or the legislation to effect it a mere wanton interference with personal liberty.

"We do not understand that a possibility of an evil employment of films is denied, but a freedom from the censorship of the law and a precedent right of exhibition are asserted, subsequent responsibility only, it is contended, being incurred for abuse. In other words, as we have seen, the constitution of Ohio is invoked and an exhibition of films is assimilated to the freedom of speech, writing and publication assured by that instrument

and for the abuse of which only is there responsibility, and, it is insisted, that as no law may be passed 'to restrain the liberty of speech or of the press,' no law may be passed to subject moving pictures to censorship before their exhibition.

"We need not pause to dilate upon the freedom of opinion and its expression, and whether by speech, writing or printing. They are too certain to need discussion—of such conceded value as to need no supporting praise. Nor can there be any doubt of their breadth nor that their underlying safeguard is, to use the words of another, 'that opinion is free and that conduct alone is amenable to the law.'

"Are moving pictures within the principle, as it is contended they are? They, indeed, may be mediums of thought, but so are many things. So is the theatre, the circus, and all other shows and spectacles, and their performances may be thus brought by the like reasoning under the same immunity from repression or supervision as the public press,—made the same agencies of civil liberty.

"Counsel have not shrunk from this extension of their contention and cite a case in this court where the title of drama was accorded to pantomime;[1] and such and other spectacles are said by counsel to be publications of ideas, satisfying the definition of the dictionaries,—that is, and we quote counsel, a means of making or announcing publicly something that otherwise might have remained private or unknown,—and this being peculiarly the purpose and effect of moving pictures they come directly, it is contended, under the protection of the Ohio constitution.

"The first impulse of the mind is to reject the contention. We immediately feel that the argument is wrong or strained which extends the guaranties of free opinion and speech to the multitudinous shows which are advertised on the billboards of our cities and towns and which regards them as emblems of public safety, to use the words of Lord Camden, quoted by counsel, and which seeks to bring motion pictures and other spectacles into practical and legal similitude to a free press and liberty of opinion.

[1] Kalem vs. Harper Bros., 222 U. S. 55.

"The judicial sense supporting the common sense of the country is against the contention. As pointed out by the District Court, the police power is familiarly exercised in granting or withholding licenses for theatrical performances as a means of their regulation. The court cited the following cases: *Marmet v. State*, 45 Ohio, 63, 72, 73; *Baker v. Cincinnati*, 11 Ohio St. 534; *Commonwealth v. McGann*, 213 Massachusetts, 213, 215; *People v. Steele*, 231 Illinois, 340, 344, 345.

"The exercise of the power upon moving picture exhibitions has been sustained. *Greenburg v. Western Turf Ass'n*, 148 California, 126; *Laurelle v. Bush*, 17 Cal. App. 409; *State v. Loden*, 117 Maryland, 373; *Block v. Chicago*, 239 Illinois, 251; *Higgins v. Lacroix*, 119 Minnesota, 145. See also *State v. Morris*, 76 Atl. Rep. 479; *People v. Gaynor*, 137 N. Y. S. 196, 199; *McKenzie v. McClellan*, 116 N. Y. S. 645, 646.

"It seems not to have occurred to anybody in the cited cases that freedom of opinion was repressed in the exertion of the power which was illustrated. The rights of property were only considered as involved. It cannot be put out of view that the exhibition of moving pictures is a business pure and simple, originated and conducted for profit, like other spectacles, not to be regarded, nor intended to be regarded by the Ohio constitution, we think, as part of the press of the country or as organs of public opinion. They are mere representations of events, of ideas and sentiments published and known, vivid, useful and entertaining no doubt, but, as we have said, capable of evil, having power for it, the greater because of their attractiveness and manner of exhibition. It was this capability and power, and it may be in experience of them, that induced the State of Ohio, in addition to prescribing penalties for immoral exhibitions, as it does in its Criminal Code, to require censorship before exhibition, as it does by the act under review. We cannot regard this as beyond the power of government.

"It does not militate against the strength of these considerations that motion pictures may be used to amuse and instruct in other places than theatres—in churches, for instance, and in Sunday schools and public schools. Nor are we called upon to

say on this record whether such exceptions would be within the provisions of the statute nor to anticipate that it will be so declared by the state courts or so enforced by the state officers.

"The next contention of complainant is that the Ohio statute is a delegation of legislative power and void for that if not for the other reasons charged against it, which we have discussed. While administration and legislation are quite distinct powers, the line which separates exactly their exercise is not easy to define in words. It is best recognized in illustrations. Undoubtedly the legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply. If this could not be done there would be infinite confusion in the laws, and in an effort to detail and to particularize, they would miss sufficiency both in provision and execution.

"The objection to the statute is that it furnishes no standard of what is educational, moral, amusing or harmless, and hence leaves decision to arbitrary judgment, whim and caprice; or, aside from those extremes, leaving it to the different views which might be entertained of the effect of the pictures, permitting the 'personal equation' to enter, resulting 'in unjust discrimination against some propagandist film,' while others might be approved without question. But the statute by its provisions guards against such variant judgments, and its terms, like other general terms, get precision from the sense and experience of men and become certain and useful guides in reasoning and conduct. The exact specification of the instances of their application would be as impossible as the attempt would be futile. Upon such sense and experience, therefore, the law properly relies. This has many analogies and direct examples in cases, and we may cite *Gundling v. Chicago*, 177 U. S. 183; *Red 'C' Oil Manufacturing Co. v. North Carolina*, 222 U. S. 380; *Bridge Co. v. United States*, 216 U. S. 177; *Buttfield v. Stranahan*, 192 U. S. 470. See also *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 86. If this were not so, the many administrative agencies created by the state and National governments would be denuded of their

utility and government in some of its most important exercises become impossible.

"To sustain the attack upon the statute as a delegation of legislative power, complainant cites *Harmon v. State*, 66 Ohio St. 249. In that case a statute of the State committing to a certain officer the duty of issuing a license to one desiring to act as an engineer if 'found trustworthy and competent,' was declared invalid because, as the court said, no standard was furnished by the General Assembly as to qualification, and no specification as to wherein the applicant should be trustworthy and competent, but all was 'left to the opinion, finding and caprice of the examiner.' The case can be distinguished. Besides, later cases have recognized the difficulty of exact separation of the powers of government, and announced the principle that legislative power is completely exercised where the law 'is perfect, final, and decisive in all of its parts, and the discretion given only relates to its execution.' Cases are cited in illustration. And the principle finds further illustration in the decisions of the courts of lesser authority but which exhibit the judicial sense of the State as to the delegation of powers.

"Section 5 of the statute, which provides for a censor congress of the censor board and the boards of other States, is referred to in emphasis of complainant's objection that the statute delegates legislative power. But, as complainant says, such congress is 'at present non-existent and nebulous,' and we are, therefore, not called upon to anticipate its action or pass upon the validity of Section 5.

"We may close this topic with a quotation of the very apt comment of the District Court upon the statute. After remarking that the language of the statute 'might have been extended by descriptive and illustrative words,' but doubting that it would have been the more intelligible and that probably by being more restrictive might be more easily thwarted, the court said: 'In view of the range of subjects which complainants claim to have already compassed, not to speak of the natural development that will ensue, it would be next to impossible to

devise language that would be at once comprehensive and automatic.'

"In conclusion we may observe that the Ohio statute gives a review by the courts of the State of the decision of the board of censors."

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